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TITLE XI

CHAPTER 110: BUSINESS REGULATIONS

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GENERAL LICENSING PROVISIONS

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Licenses required to engage in certain businesses Application for license

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110.1 LICENSES REQUIRED TO ENGAGE IN CERTAIN BUSINESSES.

No person shall engage in any of the trades, businesses, or professions for which licenses are required by Title XI of this code or by any other ordinance of the city or provision of this code without first applying for and obtaining a license from the City Clerk or other duly authorized issuing authority.

110.2 APPLICATION FOR LICENSE.

(A) All original applications for licenses, unless otherwise specifically provided, shall be made to the City Clerk or other authorized official in writing upon forms to be furnished by him or her and shall contain:

- (1) The applicant's full name, address, and telephone number, and the full name of each officer, partner or business associate, if applicable;
- (2) His or her present occupation and principal place of business;
- (3) His or her place of residence for the preceding five years;
- (4) The nature and location of the intended business or enterprise;
- (5) The period of time for which the license is desired;
- (6) A description of the merchandise , goods or services to be sold;
- (7) If motor vehicles are to be used, a full description of each motor vehicle, including the make, model, year, color, license number, and vehicle registration (VIN) number of the vehicle.
- (8) Other information concerning the applicant and his or her business as may be reasonable and proper, having regard to the nature of the license desired.

(B) Any change in the information required by division (A) of this section must be reported to the City Clerk or other authorized official within 14 days of that change.

(C) Renewal of an annual license may be granted to a licensee in good standing on the basis of the original application, unless otherwise provided. However, if a request for renewal is not submitted to the City Clerk or other authorized official within 21 days after the date of expiration for the preceding license, the applicant must fill out an original application.

(D) With each original or renewal application, the applicant shall deposit the fee required for the license requested.

(E) It shall be unlawful to knowingly make any false statement or representation in the license application.

110.3 ISSUANCE OF LICENSE.

Upon receipt of an application for a license, accompanied by the proper fee if approval by another officer or department is not required, the City Clerk, shall deposit the fee in the general fund of the city and issue to the applicant a proper license certificate signed by the City Clerk.

110.4 DATE AND DURATION OF LICENSE.

A license shall not be valid beyond the expiration date therein specified and, unless otherwise provided, shall not extend beyond December 31 of the year issued. However, at any time after December 1, licenses may be issued for the next calendar year.

Unless otherwise specified, the full annual fee will be required of licensees irrespective of the date of issuance of the license.

110.5 LICENSE NOT TRANSFERABLE.

Every license shall be issued to a real party in interest in the enterprise or business, and unless otherwise provided, no license shall be assigned or transferred .

110.6 LICENSE CERTIFICATE TO BE DISPLAYED.

Every licensee carrying on business at a fixed location shall keep posted in a prominent place upon the premises the license certificate. Other licensees shall carry their licenses at all times, and whenever requested by any officer or citizen, shall exhibit the license .

110.7 REVOCATION OR SUSPENSION.

(A) Any license may be suspended or revoked by the City Clerk or City Council at any time for any of the following reasons:

- (1) For conditions or considerations which, had they existed at the time of issuance, would have been valid grounds for its denial;
- (2) For any misrepresentation of a material fact in the application discovered after issuance of the license;
- (3) For any misrepresentation or materially false statement made in the course of carrying on the trade, business or profession;
- (4) For violation of any provision of this chapter or other federal, state or municipal law or ordinance relating to the operation of the business or enterprise for which the license has been issued;
- (5) Upon conviction of a licensee for any federal, state or municipal law or ordinance involving the creation of a nuisance, a breach of the peace, interference with the rights of property owners, or any other offense constituting a threat to the public health, safety, morals or general welfare of the public.

(B) The suspension or revocation shall become effective upon notice served upon the licensee . The notice shall contain a written summary of the reasons for the suspension or revocation and a statement concerning the right to appeal the decision. The notice shall be delivered by certified mail, return receipt requested, to the address given on the licensee's application.

110.8 APPEAL AND REVIEW.

In case any applicant has been denied a license by the City Clerk, or if his or her license has been suspended or revoked by the City Clerk, the applicant or licensee shall within ten business days have the right to appeal to the City Council from the denial, suspension or revocation. Notice of appeal shall be filed in writing with the City Clerk or other authorized official. Notice of appeal shall be filed in writing with the City Clerk. Three members of the City Council shall constitute a quorum to hear the appeal. The appellant may appear and be heard in person or by counsel. If, after hearing, a majority of the members of the City Council present at the meeting declare in favor of the applicant, the license shall be issued or fully reinstated as the case may be; otherwise the suspension or revocation shall become final.

CHAPTER 111: BUSINESS REGULATIONS

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FRANCHISE AGREEMENT CABLE COMMUNICATIONS

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Definitions

111A.01 GRANT OF FRANCHISE:

The Ramsey/Washington Counties Suburban Cable Communications Commission ("Commission") and the Municipality of Dellwood ("Grantor") does ordain it is in the public interest to permit the use of public rights-of-way and easements for the construction, maintenance and operation of Cable Communications System ("System") under the terms of a Franchise; said public purpose being specifically the enhancement of communications within the municipal limits of Grantor, the expansion of communications opportunities outside Grantor, and the provision of programming of a truly local interest. The City has entered into an agreement with Group W Cable of Ramsey /Washington, Inc. for the operation and maintenance of a cable communications system. A copy of the entire Franchise Agreement is available for inspection and copying in the office of the City Clerk.

111A.02 STATEMENT OF INTENT AND PURPOSE.

Grantor intends by the adoption of this Ordinance, to bring about the development and operation of a system. Such a development can contribute significantly to the communication needs and desires of citizens of Grantor, the surrounding area and the member municipalities of Commission. Further, the development and operation of a system may help achieve better utilization and improvement of public services. Studies participated in by Grantor and Commission have led the way for organizing this means of procuring and securing a system deemed best suited to Grantor and the member municipalities of Commission. This has resulted in the preparation and adoption of this Ordinance and Franchise as defined herein, in compliance with all requirements of the State of Minnesota.

111A.03 AUTHORITY .

The original Ramsey/Washington Counties Suburban Cable Communications Commission, under federal and state authority, granted a Franchise for a System operating within the Commission's territorial boundaries and prohibited operation of a System without a Franchise, and Commission carried out the ongoing administration and enforcement of the Franchise. The original Commission is to be dissolved, a successor Commission is to be created pursuant to Minnesota Statutes §471, and the individual member municipalities comprising Commission, including Grantor, must therefore enter into a franchise relationship with Group W Cable of Ramsey/Washington, Inc. d/b/a Meredith Cable (Company") pursuant to the same substantive terms and conditions of the original Commission's Franchise.

111A.04 FRANCHISE PROCESSING FEE.

Company shall be required to reimburse Grantor for all costs incurred including attorneys' fees in soliciting and evaluating applications, and processing the franchise award, and any other ongoing expenses connected with the franchise award, to the extent that such costs are not recovered from application fees.

111A.05 FRANCHISE AGREEMENT .

Grantor and Company are hereby authorized to, at the time of acceptance, enter into a Franchise Agreement, consistent with this Ordinance, governing the relationship between Grantor and Company; providing for regulation and use of the System; and prescribing liquidated damages for the violation of its provisions. The terms and conditions of the Agreement are incorporated herein by reference. The Agreement is on file in the office of the City Clerk.

111A.06 SHORT TITLE

This ordinance shall be known and cited as the "Cable Communications Franchise Ordinance", hereinafter in this document referred to as "Ordinance".

111A.07 DEFINITIONS

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

"Channel" shall mean a six Megahertz (MHz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals, or some combination of such signals.

"Class IV Cable Communications Channel" means a signaling path provided by System to transmit signals of any type from a subscriber terminal to another point in the System.

"Community Access Corporation" shall mean the non-profit, public corporation whose duties may include the financing, management and programming of the community access and Public access channels.

"Community Programming" shall mean the programming that will be the responsibility of the Commission or its designee, pursuant to the Franchise Agreement.

"Community Programming Channels" shall mean all of the Channels on the System designated for Community Programming in the Franchise Agreement.

"Company" shall mean Group W Cable of Ramsey/Washington, Inc., its agents, employees, lawful predecessors, successors, transferees or assignees.

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

"FCC" shall mean the Federal Communications Commission or a designated representative.

"Franchise" means the rights and obligations extended by Grantor to Company to own, operate and maintain a System within the Municipality and the Ramsey/Washington Service Territory and manifested by the following :

A. This Ordinance No. adopted by the Grantor on the day of
----2009; and

B. A Franchise Agreement entered into between Grantor and Company based on the authority and grant of a cable communications franchise extended by this Ordinance and any and all acceptance agreements related thereto.

"Franchise Agreement" means the agreement entitled "Cable Communications Franchise Agreement" between Grantor and Company which is incorporated herein by reference and which is enforceable by Grantor and Company and which sets forth the rights and obligations between Grantor and Company arising out of the Franchise.

"Grantor" or "Municipality" shall mean the Municipality of Dellwood, Minnesota, its governing body, and its

lawful assigns or designees , including specifically the Commission.

"Institutional Network" or "1/Net" shall mean the 440 MHz capacity , single cable network, more particularly described in Section 4.02 of the Franchise Agreement.

"Member Municipality" shall mean any municipality which enters into the Joint and Cooperative Agreement and is, at the time involved, a member in good standing.

"Non-Voice Return Communications" shall mean the result of appropriate System design techniques which incorporate installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.

"Offering of Company" or "Offering" shall mean that certain document entitled "Offering of Company" and signed by Company and the Commission, and any amendments thereto, which document is on file with Grantor. Further, to the extent that the Franchise Agreement may conflict with the Offering, the provisions of the Franchise Agreement shall supersede those of the Offering, only where such terms are in direct and irreconcilable conflict.

"Ordinance" means this Ordinance No. 111 of the Municipality.

"Ramsey/Washington Counties Suburban Cable Communications Commission" or "Commission" shall mean the joint powers commission established by the cities of:

Birchwood Village, Dellwood, Lake Elmo, Mahtomedi, Maplewood, North St. Paul, Oakdale, Vadnais Heights, White Bear Lake, and Willernie, and the townships of Grant and White Bear, Minnesota, as reorganized under Minnesota Statutes § 471.

"Person" shall mean any corporation , partnership, proprietorship , individual or organization authorized to do business in the State of Minnesota, or any natural person.

"Public Property" shall mean any real property owned by Grantor or any other governmental unit, other than a Street.

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

"System" shall mean a broadband telecommunications system of antennas , cables, wires, lines, towers , wave guides or other conductors, converters , equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting , amplifying and distributing audio, video and other forms of electronic or electrical signals, located in Grantor.

"Subscriber" shall mean any Person or entity who lawfully subscribes to a service provided by Company by means of or in connection with the System and pays a fee unless such fee is lawfully waived .

"Two-Way System" means a distribution system that has amplifiers that can pass video, voice and/or data signals in both directions simultaneously.

111A.08 GRANT OF AUTHORITY AND GENERAL PROVISIONS

111A.081 Grant of Franchise. The Franchise is granted pursuant to the terms and conditions contained

herein and the accompanying agreements constituting the Franchise. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules and regulations. Granter hereby intends to adopt a replacement Franchise and enter into a franchise relationship on substantially the same terms and conditions as previously existed between the original Commission and Company. In the event any term or condition herein differs in any substantive respect from a term or condition in the prior Franchise, such prior Franchise term or condition shall continue in full force and effect, and shall supersede such term or condition.

111A.082 Criteria of Selection. Company's technical ability, financial condition and Legal qualifications were considered and approved by the original Commission, including Granter, in a full public proceeding which afforded reasonable notice and a reasonable opportunity to be heard. By adoption of this Franchise, Granter accepts the review of the original Commission and approves Company's qualifications for the purposes contemplated herein.

111A.09 **AUTHORITY FOR USE OF STREETS.**

- A. For the purposes of operating and maintaining System in Granter, Company may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within Granter such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with. Prior to construction or alteration, Company shall in each case file plans with Granter, all appropriate agencies and utility companies and receive written approval of such plans. Company shall provide a monthly progress report to Granter through the completion of construction.
- B. Company shall construct and maintain System so as not to interfere with other uses of Streets. Company shall make use of existing poles and other facilities available to Company. Company shall make reasonable efforts to individually notify all residents affected by proposed construction prior to the commencement of that work.
- C. Notwithstanding the above grant to use Streets, no Street shall be used by Company if Granter in its sole opinion determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used.

111A.10 **FRANCHISE TERM.**

This Franchise shall commence upon the date this Ordinance becomes effective.

111A.11 **Franchise Non-Exclusive.** The Franchise granted herein is non-exclusive.

111A.12 **Cable Communications Franchise Required.** No System shall be allowed to occupy or use the Streets or other Public Property of Granter or be allowed to operate without a Franchise.

111A.13 **DESIGN PROVISIONS**

111A.13 1 Initial Channel Capacity.

A System shall be a single trunk 450 MHz cable activated immediately with sixty-four (64) downstream Channels and four (4) return (upstream) Channels. FM music service shall be available through System.

Notwithstanding anything to the contrary, Company shall install dual 450 MHz cable in all underground locations, provided, however, that Company is not required to install dual 450 MHz cable or dual conduit in any new build locations meeting the line extension criteria contained herein.

B. System shall have initially a separate Institutional Network with a capacity of 56 video

Channels, 31 activated downstream Channels, and 25 activated upstream Channels.

- C. Both Subscriber and Institutional Networks shall be capable of passing signals upstream and downstream simultaneously and have the technical capacity for non-voice return communications .

111A.132 Interconnection.

System shall be designed to be interconnected with other cable communications system(s) . The standard VHF Channel 6 is hereby designated for uniform regional channel usage; provided, however, that until the uniform regional channel becomes operational, the standard VHF Channel 6 may be utilized by Company as it deems appropriate. Subject to approval by Granter, the designated uniform regional channel may be shared with the government access channel as may be required until such time as Granter requests a separate channel or until combined usage of the channel expands to such point as it is in use during eighty percent (80%) of the time between 8:00 a.m. and 10:00 p.m. during any consecutive six-week period.

111A.133 Technical Performance Standards.

At a minimum, System technical and performance standards promulgated by the FCC relating to cable communications systems contained in sub-part K of part 76 of the FCC's rules in effect at the time of application submission are incorporated herein by reference. Company shall further abide by standards agreed upon by Granter and Company and set forth in the Franchise Agreement. The results of

any tests required by the FCC shall be filed within ten (10) days of the conduct of such tests with Granter.

111A.134 Special Testing.

The following procedures shall apply to any special testing required by Granter:

A If special testing required by Granter establishes that System is not in compliance with prescribed technical standards, Company shall bear all costs of the special testing.

B. If special testing required by Granter establishes that System is in compliance with prescribed technical standards, Granter shall bear all costs of the special testing .

Granter shall bear all costs of any other special testing required by Granter.

111A.14 CONSTRUCTION PROVISIONS

111A.141 Construction Timetable .

Company's construction timetable (submitted in with a map for the initial service area and made a part of the Franchise) reflects and schedule of construction of System. The plan of Company will reflect at the following :

A Within 90 days of the granting of the Franchise, Company shall apply for all necessary governmental permits, licenses , certificates and authorizations .

B. All engineering and design shall be completed within one year after the granting of the Franchise.

C. A significant amount of construction shall be completed within one year after Company's receipt of all necessary governmental permits, licenses, certificates and authorizations .

- D. Energized trunk cable shall be extended substantially throughout the authorized area within five years after commencement of construction. Persons along the route of the energized cable will have individual "drops" within the same period of time, if the same is desired.
- E. Construction of the initial service area shall be completed within three (3) years of certification by Board.
- F. The requirements of this section may be waived by Grantor only upon occurrence of unforeseen events or acts of God.

111A.142 Permits.

Company shall obtain a permit from Grantor before commencing construction of System, including the opening or disturbance of any Street, sidewalk, driveway or public place. Any and all Streets which are disturbed or damaged during the construction, operation, maintenance or reconstruction of System shall be promptly repaired by Company, at its expense and to the satisfaction of Grantor. There shall be imposed a daily fine of Fifty Dollars (\$50.00) per incident should Company not meet the conditions of any applicable city permit not to disturb the streets.

111A.143 Construction Codes.

All wires, conduits, cable and other property and facilities of Company shall be located, constructed, installed and maintained in compliance with applicable codes. Company shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the Streets and public places of the Franchise area or endanger the lives or property of any Person. In the event of such interference, Grantor may require the removal of Company's lines, cables and appurtenances from the Street or property in question. Grantor shall have the right to inspect all construction or installation work performed subject to the provisions of the Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and pertinent provisions of law and ordinances that are applicable.

111A.144 Reservation of Street Rights.

Nothing in the Franchise shall be construed to prevent Grantor from constructing sewers, grading, paving, repairing and/or altering any Street, or laying down, repairing or removing water mains, or constructing or establishing any other public work. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Company. If any such property of Company herein shall interfere with the construction or repair of any Street or improvement, thirty (30) days' notice shall be given to Company by Grantor and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Company in such manner as shall be directed by the Grantor so that the same shall not interfere with the said public work of City, and such removal or replacement shall be at the expense of Company herein.

111A.15 OPERATION AND MAINTENANCE

111A.151 Annual Reports.

Grantor shall have the authority to collect a use fee and to audit Company's accounting and financial records upon reasonable notice as set forth in the Franchise Agreement. Company shall file with Grantor annually reports of gross revenues and other information as set forth in the Franchise Agreement.

(111A.152 Maintenance and Complaints.

A toll-free or collect telephone number for the reception of complaints shall be provided to Subscribers and Company shall maintain a repair service capable of responding to Subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. Company shall investigate and resolve all complaints regarding quality of service, equipment malfunction, billing disputes and other matters pursuant to the procedure set forth in the Franchise Agreement. Company will bear the costs included in making such repairs, adjustments or installations unless Company deems such repairs necessary due to neglect or abuse of Subscriber. All costs for repairs necessary due to neglect or abuse of Subscriber shall be borne by the Subscriber.

111A.153 Rates and Other Charges.

A All regulatable rates and charges shall be subject to regulations by Grantor, in a manner to be provided by it. In the absence of any Grantor action taken to exercise rate regulation, Company shall be subject to the rate regulation provisions provided herein, and of the state or its agencies that may from time to time be applicable.

B. Rates and charges charged by Company for monthly service and installation and all other charges hereunder shall be uniform, fair and reasonable and designed to meet all necessary costs of service, including a fair rate of return on the original cost, less depreciation, of the properties devoted to such service.

C. Standard installation rates shall apply to installations that are two hundred (200) feet or less from the distribution plant. For aerial and underground installation of service drops longer than two hundred (200) feet, Subscribers will be charged an additional amount for the installation equal to the incremental increase of the cost of time and materials for the portion of the drop over two hundred (200) feet.

D. Service requests for maintenance or repair of System shall be performed at no charge to a Subscriber, If such maintenance or repair is required as a result of damage caused by Subscriber, Company may charge according to its actual cost for time and material.

E. Company may offer both its initial and additional installation services to Subscribers at uniformly applied reduced rates.

111A.154 Rate Changes .

A change in any regulatable rate shall require approval of Grantor and shall be effectuated pursuant to terms of the Franchise Agreement.

111A.155 Service Contract.

The length and terms of the service contract shall be as set forth in the Franchise Agreement.

111A.16 GENERAL FINANCIAL AND INSURANCE PROVISIONS.

111A.161 Performance Bond.

At the time the Franchise becomes effective and at all times thereafter until Company has liquidated all of its obligations with Grantor, Company shall furnish a performance bond approved by Grantor in such amount as Grantor deems to be adequate compensation for damages resulting from Company's nonperformance. Grantor may, from year to year, in its sole discretion, reduce the amount of the performance bond. The amount of the performance bond shall be as set forth in the Franchise Agreement.

111A.162 Liability Insurance and Indemnification .

Company shall indemnify and hold harmless Grantor at all times during the term of the Franchise, and maintain throughout the term of the Franchise, liability insurance in such amount as Grantor may require insuring both Grantor and Company with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the Franchise. Company shall initially maintain insurance in such amounts as set forth in the Franchise Agreement.

111A.163 Duty to Company.

Nothing contained in the Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system.

111A.17 REVOCATION, ABANDONMENT, PURCHASE AND REMOVAL OF SYSTEM

111A.171 Grantor's Right to Revoke.

Grantor reserves the right, in its sole discretion, to terminate and cancel the Franchise and all rights and privileges of the Franchise in the event: (1) Company substantially violates any provision of the Franchise, (2) Company attempts to evade any of the provisions of the Franchise, (3) Company practices any fraud or deceit upon Grantor, (4) Company becomes insolvent, unable or unwilling to pay its debts, (5) Company is adjudged bankrupt, (6) Company materially misrepresents a fact in the application for or negotiation of the

Franchise, or (7) upon the conviction of any director, officer, employee or agent of Company of the offense of bribery or fraud connected with or resulting from the awarding of the Franchise. Nothing in the Franchise granted by this Ordinance shall preclude termination of it at any time by mutual agreement of both Grantor and Company .

111A.172 Procedures.

Grantor shall provide Company with a written notice of the cause for termination and its intention to terminate the Franchise and shall allow the Company a minimum of thirty (30) days after service of the notice in which to correct the violation. Company shall be provided with an opportunity to be heard at a public hearing before Grantor prior to the termination of the Franchise. In the event Grantor determines to terminate the Franchise, Company shall have a period of thirty (30) days, from the date of the conclusion of the public hearing at which the termination of the Franchise was considered, within which to file an appeal.

During the thirty (30) day period and until the appeal is decided , the Franchise shall remain in full force and effect, unless the term of the Franchise ends sooner.

111A.173 Removal of System.

Upon termination , forfeiture or expiration of the Franchise, if not renewed, Company shall remove its cables, wires and appliances from the Streets and other public and private property within Grantor, if

Grantor so requests, and Granter shall follow procedures set forth in the Franchise Agreement in the event Company fails to remove its cable, wires and appliances from the Streets and other public and private property within Member Municipalities.

111A.174 Purchase.

When System or the Franchise is offered for sale or at the termination of the Franchise, Granter shall have the right to purchase System in the manner set forth in the Franchise Agreement.

111A.175 Abandonment.

Company may not abandon any cable communications service or any portion thereof without having given three (3) months prior written notice to Granter and Board. Further, Company may not abandon any cable communications service or any portion thereof without compensating Grantor for damages resulting from the abandonment. The amount of damages resulting from abandonment shall be determined by Granter.

111A.176 Damage Due to Abandonment or Other Non-Performance .

In the event Company abandons System for any reason or if Company files or has filed against it a petition in bankruptcy, a petition for the appointment of a receiver for all or part of its assets, or a levy of execution against all or part of its assets or makes an assignment for the benefit of its creditors , then any credit on future franchise fees Company may then be entitled, due to the advance

payment of franchise fees, shall be retained by Grantor for application towards the damages incurred by Grantor, provided no additional revenues are received which are subject to the franchise fee. The rights reserved to Grantor above shall be in addition to all of the rights of Grantor, whether reserved by the Franchise or authorized by law, and no action authorized by this Section 9.06 shall affect any other right Grantor may have.

111A.18 RIGHTS OF INDIVIDUALS PROTECTED

111A.181 Monitoring Subscriber Viewing.

No signals of a Class IV Cable Communications Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Request for such permission shall be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which shall be renewed at the option of the Subscriber. No penalty shall be invoked for the Subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever . Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

111A.182 Sale of Subscriber Lists Prohibited .

No information or data obtained by monitoring transmission of a signal from a Subscriber terminal , or by any other means, including, but not limited to, lists of the names and addresses of such Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Company and its employees for internal business use, and also to the Subscriber who is a subject of that information, unless Company has received specific written authorization from Subscriber to make such data available. The sale of any subscriber list, however generated, is also prohibited.

111A.183 Protection of System Integrity.

Written permission from the Subscriber shall not be required for the conducting of System-wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billings. Confidentiality of such information shall be subject to the provision set

forth above in paragraph 10.02.

111A.184 Subscriber Access to Information.

Upon written request by a Subscriber, Company shall within ten (10) days of receiving such request provide the Subscriber with copies of all individually identifiable information relating to the Subscriber, Subscriber household, or user of a Subscriber terminal currently maintained by Company. Company shall make the disclosures required under this paragraph to the Subscriber in person, by mail, or in any combination of these ways at the option of the Subscriber.

111A.185 Procedure for Disputing Accuracy.

The following shall apply where a Subscriber disputes the accuracy or completeness of any item of information disclosed to a Subscriber by Company under Section 10.04.

- A. The Subscriber must convey the dispute within sixty (60) days of receipt of the disputed information directly to Company. The dispute may be conveyed in writing or in person by the Subscriber.
- B. Company shall within thirty (30) days reinvestigate and record the current status of the disputed information. Such reinvestigation shall be completed within thirty (30) days of its commencement. If after such reinvestigation the information is found to be inaccurate, incomplete, or can no longer be verified, Company shall within ten (10) days delete or correct the information. Company may not require the appearance of a Subscriber at its office as a precondition to the right of a Subscriber to a reinvestigation under this Section.
- C. After completion of any reinvestigation pursuant to subdivision B of This Section, Company shall within ten (10) days notify the Subscriber of the result of the reinvestigation or of its decision regarding deletion or inclusion of information and shall clearly and conspicuously disclose to the Subscriber his or her rights under this Section.
- D. If the reinvestigation does not resolve the dispute, the Subscriber may file a statement with Company setting forth the nature of the dispute. Company may limit such statements to not more than five hundred (500) words if it provides the Subscriber with assistance in writing a clear summary of the dispute.
- E. Whenever a statement of a dispute is filed, Company shall, in any subsequent disclosure containing the information in question, clearly note that it is disputed by the Subscriber and provide the recipient with a copy of the statement filed by the Subscriber. A mere reference to the fact that a disputed statement is in the record and may be obtained on request does not comply with this Section.

111A.19 COMMUNITY PROGRAMMING, COMMUNITY PROGRAMMING CHANNELS AND INSTITUTIONAL NETWORK REQUIREMENTS.

111A.191 Minimum Required Community Programming Channels.

Company shall provide to each of its Subscribers who receives some or all of the total services offered on System reception, without charge, Community Programming on the Community Programming Channels, pursuant to the joint responsibilities between Granter and Company described in the Franchise Agreement. The Granter shall provide through the Community Programming Channels at least one specially designated noncommercial public access channel available for use by the

general public on a first-come, first-served, nondiscriminatory basis; at least one specially designated access channel for use by local educational authorities; at least one specially designated access channel available for local government use; and at least one specially designated access channel available for lease on a first-come, first-served, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum shall be used for at least one of the specially designated noncommercial public access channels required in this paragraph unless specifically waived by Grantor or its designee.

No charges may be made by Grantor for channel time or playback of prerecorded programming on at least one of the specially designated noncommercial public access channels required by this subdivision, provided, however, that personnel, equipment, and production costs may be assessed for live studio presentations exceeding five minutes in length. Charges for such production costs and any fees for use of other public access channels must be consistent with the goal of affording the public a low-cost means of television access.

111A.192 Additional Community Programming Channels.

Whenever the specially designated noncommercial public access channel, the specially designated education access channel, the specially designated local government access channel, or the specially designated leased access channel required in this section is in use during 80% of the weekdays (Monday-Friday), for 80% of the time during any consecutive 3 hour period for six weeks running, and there is demand for use of an additional channel for the same purpose,

Company shall then have six months in which to provide a new specially designated access channel for the same purpose, provided that provision of such additional channel or channels shall not require Company to install converters.

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

111A.193 Operating Rules.

Grantor, and/or its designee, may establish rules pertaining to the administration of the Community Programming Channels.

111A.194 Alarm Service/Data Transmission Services.

To the extent Company provides only alarm services or only data transmission services for computer operated functions, Company need not Community Programming reception to alarm and data service Subscribers.

111A.195 Community Programming Equipment.

Grantor or its designee will make readily available for public use at least the minimal equipment necessary for the production of programming and playback of prerecorded programs for the specially designated noncommercial public access channel(s).

111A.196 Institutional Network Requirements.

Grantor will assume responsibility for the I/Net, which is part of the System, in accordance with the provisions of the Franchise Agreement.

111A.197 Access to Community Programming Channels And The I/Net.

The Grantor and its designee shall have complete and unrestricted access to the Community Programming Channels and the I/Net, however, the Company shall have full responsibility for the maintenance, repair, and technical performance of the cable

and related active and passive electronics which carry said Community Programming Channels and the services provided by Company on this I/Net (excluding all equipment owned and operated by the Granter or its designee).

111A.20 MISCELLANEOUS PROVISIONS

111A.201 Compliance with Laws.

Company shall conform with all the state laws and rules regarding cable communications not later than one year after they become effective, unless otherwise stated. Company shall conform with all federal laws and regulations regarding cable communications as they become effective. Company shall also conform with all City ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise.

111A.202 Sale or Transfer of Franchise.

The sale or transfer of the Franchise or sale or transfer of stock so as to create a new controlling interest pursuant to Chapter 1 2 of Board's rules and regulations is prohibited, except at the approval of Granter, which approval shall not be unreasonably withheld, and that such sale or transfer is completed pursuant to Chapter 1 2 of Board's rules and regulations and as agreed upon in the Franchise Agreement.

111A.203 Amendment of Franchise Ordinance and Variance Procedure.

- A. After published notice, public hearings and deliberations of Granter, this Ordinance may be amended upon a weighted majority vote of the Commission and the written consent of Company.
- B. When the Commission Franchise administrator determines that a proposed change, alteration or substitution in Company's offering will be non-controversial in nature, the following procedure may be utilized rather than the provisions of paragraph A above.

The Franchise administrator shall give notice of the intention to change, alter, or substitute a provision of the Offering without public hearing. The notice shall be given by publication in the official newspapers of each City. The notice shall include a summary of the proposed change, alteration or substitution . The notice shall include a statement advising the public:

- a. That they have ten (10) days in which to submit comment on the proposed change, alteration or substitution ;
- b. That no public hearing will be held unless seven (7) or more persons make a written request for a hearing within the ten (10) day comment period; and
- c. Of the manner in which persons shall request a hearing on changes proposed pursuant to this subdivision .

2. Applications for variance shall be filed with the Commission Franchise administrator and subject to the following procedures:

- a. An application fee of Fifty Dollars (\$50.00) plus actual costs incurred by Grantor, including costs of outside consultants, shall be paid to Grantor by applicant at the time of approval of a request for variance. An application for variance may include more than one (1) variance request if the Franchise administrator or Grantor determines that there is sufficient similarity or relationships between issues to warrant the use of only one (1) application.
- b. The Commission Franchise administrator shall give notice of the application to Grantor and Company of the date, time and place for review of the application.
- c. The Franchise administrator shall review the application within fourteen (14) calendar days of publication of the notice unless a public hearing is required.
- d. In the event a public hearing is required, the hearing shall be held within ten (10) calendar days after demand for such a hearing has been met. The Commission Franchise administrator shall review the application within seven (7) calendar days of the conclusion of the public hearing.
- e. Grantor shall receive a report of the findings of the Franchise administrator at its next meeting following the date of review by the Franchise administrator.
- f. The variance will be deemed approved by majority vote of Grantor.

3. Before a variance is granted, the following findings shall be made by the Commission Franchise administrator and shall be included in the report to Grantor:

- a. The requested variance is a minor deviation from the offering and is consistent with the Franchise in the sole judgment of Grantor.
- b. Application of the provisions of the Franchise may result in a hardship to the applicant and to grant a variance would not be detrimental to other affected parties.
- c. Due to expense or delay, it would be unreasonable to perfect such changes by Ordinance amendment.
- d. Undue delay, expense of other adverse results will not occur by approval of the required variance.
- e. If a variance is because of technical or cost reasons, the variance will result in equal or better technical standards of cost efficiency.

111A.204 Franchise Renewal.

A. Company may apply for renewal or renegotiation of the Franchise by making application to do so not later than eighteen (18) months prior to the expiration of the Franchise on forms provided by Grantor, unless Grantor determines not to reissue the Franchise to Company or desires to consider additional applicants for a Franchise.

B. Company may be approved, and the Franchise or modification to it may be renewed or extended by Grantor in accordance with the then existing rules of the FCC, the Board, the Cities and all other applicable laws, ordinances, rules or regulations.

C. Nothing in the Franchise shall be construed to require renewal or extension of this Franchise.

D. Renewal of the Franchise may not be for more than 15 years, unless otherwise permitted by federal or state law.

111A.205 Administration of Franchise.

A. Grantor, and/or its designee, shall be responsible for the continued administration of the Franchise.

8. Grantor shall have continuing regulatory jurisdiction and supervision over System and Company's operation under the Franchise. Grantor may issue such reasonable rules and regulations concerning the construction, operation and maintenance of System as are consistent with the provisions of the Franchise.

C. Company shall construct, operate and maintain the System subject to the supervision of Grantor and other affected Member Municipalities who have jurisdiction in such matters and in strict compliance with all laws, ordinances, departmental rules and regulations affecting System.

D. System and all parts thereof shall be subject to the right of periodic inspection by Grantor.

111A.206 Penalties.

Exclusive of contractual damages or other rights in law or equity, a violation of any provision of this Ordinance is a misdemeanor and is enforceable by Grantor.

A. From and after the effective date of the Franchise, it shall be unlawful for any Person to establish, operate or to carry on the business of distributing to any Persons in Grantor any television signals or radio signals by means of a cable communications system unless a franchise therefore has first been obtained pursuant to the provisions of the Ordinance, and unless such franchise is in full force and effect.

8. From and after the effective date of the Franchise, it shall be unlawful for any Person to construct, install or maintain within any public Street in Grantor, or within any other Public Property of Grantor, or within any privately owned area within Grantor which has not yet become a public Street but is designated or delineated as a proposed public Street on any tentative subdivision map approved by Grantor, any equipment or facilities for distributing any television signals or radio signals through a cable communications system, unless a franchise authorizing such use of such Street or property or area has first been obtained and unless such franchise is in full force and effect.

C. It shall be unlawful for any Person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised System within Grantor for the purpose of taking or receiving television signals, radio signals, pictures, programs, sound, or data transmission.

D. It shall be unlawful for any Person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised System within

(Grantor for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program, sound, or data transmission , without payment to the owner of said System.

E. It shall be unlawful for any Person, without the consent of the owner , to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs, sound, or data transmissions .

111A.21 EFFECTIVE DATE: PUBLICATION: DISSOLUTION

111A.211 Publication; Effective Date. This Ordinance shall be properly executed by the Grantor in accordance with local rules. This Ordinance shall take effect upon publication within fifteen (15) days after adoption. This Ordinance may incorporate by reference, without publication in full, a statute of Minnesota or a rule of the Board or the FCC and the Offering of Company.

111A.212 Dissolution of Commission .

- A. Method. Commission shall continue for an indefinite term up to and including fifteen (15) years. The Commission may be terminated only upon the expiration the Joint Powers Agreement or by the operation of state or federal law.
- B. Distribution of Assets . Upon dissolution of Commission, all remaining assets of Commission, after payment of obligations , shall be distributed among the Member Municipalities, including Grantor, in proportion to their contributions and in accordance with procedures established by Commission. . Commission shall continue to exist after dissolution for such period, no longer than six (6) months, as is necessary to wind up its affairs, but for no other purpose.
- C. Effectiveness of Ordinance after Dissolution. Upon the dissolution of Commission by operation of state or federal law, the Franchise shall remain effective and enforceable by Grantor within its territorial limits.

111A.213 Acceptance Procedure.

- A. Company shall accept the Franchise, in form and substance acceptable to Grantor. Upon acceptance of the Franchise, Company shall be bound by all its terms and conditions.
- B. The Offering shall be permanently kept and filed in the Office of the Commission and the originals or reproductions thereof shall be available for inspection by the public during normal business hours.
- C. Company shall have continuing responsibility for the Franchise, and if Company be a subsidiary or wholly owned corporate entity of a parent corporation , performance of the Franchise shall be secured by guarantees of the parent corporation in form and substance acceptable to Grantor, which shall be delivered at time of, and as part of, acceptance of the Franchise.
- D. With its acceptance, Company shall deliver to Commission true and correct copies of documents creating Company and evidencing its power and authority to accept the Franchise. Further, such documents shall describe officers authorized to accept on behalf of Company.

E. With its acceptance , Company shall also pay all costs and expenses incurred by Granter in connection with the franchising process. Granter shall provide an itemized statement to Company . Costs or expenses of Grantor not identified at that time shall be paid promptly by Company upon receipt of an itemized statement from Granter. It is the intent of Granter and Company that Granter be reimbursed for all costs and expenses in connection with the granting of the Franchise including any subsequent expenses due to delays or litigation pertaining to the grant of the Franchise. In order to accomplish these activities, Company shall arrange a time and place satisfactory to both Company and Granter.

F. All security deposits , insurance contracts, bonds and guarantees required by Company by the Franchise shall be delivered with the acceptance .

G. Upon the delivery of the above described documents , Granter and Company shall execute the Franchise Agreement. The execution of the Franchise Agreement shall be deemed the completion of the franchising process.

H. The commitment of Company is contained in the Offering. Company shall perform all services or offerings set forth in its Offering including all promises, offers, representations and inducements contained therein. Company's offering and specific understandings and agreements with Granter shall be embodied in and incorporated into a Franchise Agreement to be entered into between Granter and Company based upon the authority granted pursuant to this Ordinance. The Franchise Agreement is set forth as Exhibit I, a separate document, incorporated herein by reference. The failure to refer to the Offering in any specific provision in the Franchise shall not be a limitation on the obligation of Company to fully comply with the Offering. In the event of conflict or discrepancies between any parts of the Offering or the Agreement entered into between Granter and Company or this Ordinance, those provisions which provide the greatest benefit for Granter, in the opinion of Granter, shall prevail. In the event the Agreement is not entered into and executed by both the City and Company or for any other failure to complete the acceptance as provided for in this section, the Franchise granted by this Ordinance shall be void, and Granter shall have no further obligations to Company and Company shall have no claim in law or equity against Grantor.

The Exhibit and Offering are a part of this Ordinance and each is specifically incorporated herein by reference. To the extent any provision of the Offering or Exhibit I are not specifically set out in this Ordinance or not validly incorporated herein by reference, Grantor , from time to time, may amend this Ordinance to include such provision effective as of the date of commencement of this Ordinance or any such rule effective as of the date of the commencement of this Ordinance or adoption of the rule, whichever is later. Company , by acceptance of this Ordinance and the Franchise authorized by it, consents to and agrees to be bound by any such amendment.

TITLE XI: BUSINESS REGULATIONS

SECTION 111B. FRANCHISE AGREEMENT NATURAL GAS DISTRIBUTION

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF DELLWOOD, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.

111B.1 Definitions

Subd. 1 "*City*" means the City of Dellwood, County of Washington , State of Minnesota.

Subd . 2. '*City Utility System*' means the facilities used for providing non energy related public utility service owned or operated by City or agency thereof including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

Subd. 3. "*Commission* " means the Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government which preempts all of part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.

Subd.4. '*Company*' means Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, its successors and assigns.

Subd. 5. "*Gas*' as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

Subd. 6. "*Notice*" means a written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, Suite 3000, 800 Nicollet Mall, Minneapolis, MN 55402. Notice to the City shall be mailed to the City Clerk, 111 Wildwood Road, Willernie, MN 55090. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

Subd.7. '*Public Ground*' means land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

Subd . 8. *Public Way* means any street, alley, walkway or other public right-of way within the City.

111B.2 Grant of Franchise

City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the non-exclusive right and privilege of erecting a gas distribution system and using the Public Ways and Public Grounds of City for the purpose of constructing, operating, repairing, and maintaining in, on, over, under and across the same, all gas pipes, mains and appurtenances usually, conveniently, or necessarily used in connection therewith, for the purpose of the transmission of gas, or the distribution of gas, for public and private use within and through the limits of City as its boundaries exist or as they may be extended in the future. Company may also do all reasonable things necessary or customary to accomplish these purposes, subject , however, to the further provisions of this franchise agreement.

1118.3 Restrictions

Subd. I. All gas pipes, mains, regulators, and other property and facilities shall be located and constructed so as not to interfere with the safety and convenience of ordinary travel along and over said Public Ways and so as to not disrupt normal operation of City Utility System previously installed therein. Company's construction, operation, repair, maintenance and location of such facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place provided, at City's request, Company will remove abandoned metal pipe interfering with a City improvement project but only to the extent such metal pipe is uncovered by excavation as part of the City improvement project.

Subd.2. Company shall not construct any new or modified installations within or upon any Public Grounds without receiving the prior written consent of an authorized representative of City for each such new installation.

Subd.3 In constructing, removing, replacing, repairing, or maintaining said gas pipes, mains and appurtenances , Company shall, in all cases, place the Public Ways in, on, under or across which the same are located in as good condition as they were prior to said operation and maintain any restored paved surface in such condition for two years thereafter . City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance , letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

111B.14 Tree Trimming

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

1118.15 Service and Rates

The service to be provided and the rates to be charged by Company for gas service in City are subject to the jurisdiction of the Public Utilities Commission of this State or its successor agency

111B.16 Relocating

Subd . 1. Whenever City at its cost shall grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions , when necessary, and after approval of its final plans have been obtained , order Company to relocate permanently its mains, services, and other property located in said Public Way materially interfering with the City's planned construction, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any Public Way or to construct or reconstruct any City Utility System therein. However, after Company has so relocated, if a subsequent relocation or relocations shall be ordered within five (5) years from and after first relocation, City shall reimburse Company for such non-betterment relocation expense which Company may incur on a time and material basis; provided, if subsequent relocations are requested because company facilities materially and necessarily interfere with the extension of a City Utility System to previously unserved areas, Company may be required to relocate at its own expense.

Subd. 2. Nothing contained in this franchise shall require Company to relocate , remove, replace or reconstruct at its own expense its facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement

Subd.3 . Any relocation, removal, or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes Section 1 61

.46 as supplemented or amended; and further , it is expressly understood that the right herein granted to Company is a valuable property right and City shall not order

Company to remove or relocate its facilities without compensation when a Public Way is vacated.

improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such a relocation and the loss and expense resulting therefrom are first paid to Company.

Subd. 4. The provisions of this franchise shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Way or Public Ground was established, or Company's rights under state or county permit.

111B.17 Indemnification

Subd. 1. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the gas facilities located in the Public Ways and Public Grounds. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

Subd. 2 In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

111B.18 Vacation of Public Ways

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

111B. 19 Written Acceptance

Company shall, if it accepts this Ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk within ninety (90) days after the final passage and any required publication of this Ordinance.

111B.20 General Provisions

Subd. 1. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part; and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

Subd.2. If either party asserts that the other party is in default in the performance of any obligation

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

Subd. 3. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

Subd. 4 Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

Subd. 5 Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Company's facilities while performing any activity.

TITLE XI: BUSINESS REGULATIONS SECTION 111C ELECTRIC FRANCHISE ORDINANCE

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, D/B/A XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF DELLWOOD, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS AND OTHERS AND TO USE THE PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF DELLWOOD, WASHINGTON COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of *this* Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

1.1 City. The City of Dellwood, County of Washington, State of Minnesota.

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

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

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

1.5 Electric Facilities. Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.

1.6 Notice. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, Dellwood, Minnesota 55110. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

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

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

SECTION 2. ADOPTION OF FRANCHISE.

2.1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance and to the further provisions of this franchise agreement.

2.2 Effective Date: Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City, by Council resolution, may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication .

2.3 Service and Rates. The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

2.4 Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

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

SECTION 3. LOCATION. OTHER REGULATIONS.

3.1 Location of Facilities. Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds

as determined by the City. Company's construction, reconstruction; operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon

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underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

3.2 Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Pennit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required pennits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. Tbis remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4, but the City hereby waives any requirement for Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under a separate existing or future ordinance of the City, of a person or entity obtaining the City's permission to install, replace or maintain facilities in a Public Way.

3.5 Avoid Dama, to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

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

3.7 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon tenns and conditions acceptable to Company

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whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

SECTION 4. RELOCATIONS.

4.1 Relocation of Electric Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Company to relocate its Electric Facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Except as provided in Section 4.3, Company shall relocate its Electric Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense. Nothing in this Ordinance requires Company to relocate, remove, replace or reconstruct at its own expense its Electric Facilities where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement.

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

4.3 Projects with Federal Funding. Relocation, removal, or rearrangement of any Company Electric Facilities made necessary because of the extension into or through City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the right herein granted to Company is a valuable right. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to Company, but the City need not pay those portions of such for which reimbursement to it is not available.

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

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SECTION 5. TREE TRIMMING.

Company may trim all trees and shrubs in the Public Grounds and Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

SECTION 6. INDEMNIFICATION.

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

Company's determination.

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

SECTION 7. VACATION OF PUBLIC WAYS.

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

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

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

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SECTION 9. PROVISIONS OF ORDINANCE .

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

9.2 Limitation on Applicability . This Ordinance constitutes a franchise agreement between the City and Company as the only parties, and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 10. AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern., and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

SECTION 11. PREVIOUS FRANCHISES SUPERSEDED.

Passed and approved: *!VJ tiy /d₁* .2009w

Mayor

Attest

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C/ City Clerk

Date Published: */7 £ I ?' d-t90 ?'*

(CHAPTER 112: LIQUOR REGULATIONS

Section:

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- Description of premises Applications for renewal Transfer of license Investigation
- Hearing and issuance Restrictions on issuance Conditions of license Hours and days of sale Minors on premises
- Restrictions on purchase and consumption Suspension and revocation

GENERAL PROVISIONS

112.1 ADOPTION OF STATE LAW BY REFERENCE.

The provisions of M.S. Ch. 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Chapter as if set out in full. It is the intention of the City Council that all future amendments to M.S. 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Chapter is adopted.

112.2 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized by the provisions of M.S. 340A.509 , as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S. Ch. 340A, as it may be amended from time to time.

112.03 DEFINITIONS.

In addition to the definitions contained in M.S. 340A.101 , as it may be amended from time to time, the following terms are defined for purposes of this chapter:

LIQUOR. As used in this chapter, without modification by the words "intoxicating" or 3.2 percent malt, includes both intoxicating liquor and 3.2 percent malt liquor.

RESTAURANT. An eating facility, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a "restaurant" as defined by this section, an establishment shall have a license from the state as required by M.S. 157.16, as it may be amended from time to time, and meet the definition of either a "small establishment, "medium establishment" or "large establishment" as defined in M.S.157.16, Subd. 3d, as it may be amended from time to time.

112.4 CONSUMPTION IN PUBLIC PLACES.

No person shall consume intoxicating liquor or 3.2 percent malt liquor on any public street, or in any public place other than on the premises of an establishment licensed under this chapter.

LICENSING

112.5 TERM AND EXPIRATION OF LICENSES.

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses , shall expire on December 31 of each year unless another date is provided by ordinance . All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying city consent to the permit, shall expire on March 31 of each year.

112.6 KINDS OF LIQUOR LICENSES.

(A) 3.2 percent malt liquor on-sale licenses, which may be issued only to golf courses, clubs, and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.

(8) Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization.

(C) On-sale intoxicating liquor licenses, which may be issued to private clubs as defined by M S. 340A ,101, as it may be amended from time to time. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under 112.23 shall not exceed the amended amount from time to time.

(0) Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval as a general or special election as provided by M.S. 340A.504, Subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a private club which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license, which shall be established by the Council shall not exceed \$200, or the maximum amount provided by M.S. 340A.504 , Subd. 3c, as it may be amended from time to time.

(E) Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days worth of temporary licenses to any one organization in one calendar year.

(F) One day consumption and display permits with the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization.

112.7 LICENSE FEES; PRO RATA.

(A) No license or other fee established by the city shall exceed any limit established by M.S. Ch. 340A, as it may be amended from time to time, for a liquor license.

(8) The Council may establish from time to time in the Ordinance Establishing Fees and Charges the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this chapter. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.

(C) The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.

(D) All license fees shall be paid in full at the time the application is filed with the city . If the application is denied, the license fee shall be returned to the applicant.

(E) A refund of a pro rata share of an annual license fee may occur only if authorized by

122.08 COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.

The Council in its sole discretion may either grant or deny the application for any license or for the transfer or renewal of any license . No applicant has a right to a license under this chapter.

112.9 APPLICATION FOR LICENSE.

(A) *Form.* Every application for a license issued under this chapter shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the city. No person shall make a false statement in an application.

(B) *Financial responsibility.* Prior to the issuance of any license under this chapter, the applicant shall demonstrate proof of financial responsibility as defined in M.S. 340A.409, as it may be amended from time to time, with regard to liability under M.S. 340A.801 , as it may be amended from time to time. This proof will be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to M.S. 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this chapter without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

112.10 DESCRIPTION OF PREMISES.

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed . The description may not include any parking lot.

112.11 APPLICATIONS FOR RENEWAL.

At least 90 days before a license issued under this chapter is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sole discretion of the Council. No licensee has a right to have the license renewed.

112.12 TRANSFER OF LICENSE.

No license issued under this chapter may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a

license shall apply.

112.13 INVESTIGATION.

(A) *Preliminary background and financial investigation.* On an initial application for a license, on an application for transfer of a license and, in the sole discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of \$500 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$500, the unused

balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

(B) *Comprehensive background and financial investigation.* If the results of a preliminary investigation warrant, in the sole discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this comprehensive background and financial investigation to be paid by the applicant shall be \$500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and \$10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

112.14 HEARING AND ISSUANCE.

The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its sole discretion grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

112.15 RESTRICTIONS ON ISSUANCE.

(A) Each license shall be issued only to the applicant for the premises described in the application.

(B) Not more than one license shall be directly or indirectly issued within the city to any one person.

(C) No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid.

(D) No license shall be issued for any place or any business ineligible for a license under state law.

(E) No license shall be issued to any person who is not a resident of the state. If the applicant is a corporation, all of the shareholders shall be residents of the state. The provisions of this division (E) shall not apply to any license existing on the effective date of this chapter or to the renewal of an existing license.

112.16 CONDITIONS OF LICENSE.

The failure of a licensee to meet any one of the conditions of the license specified below shall result in a suspension of the license until the condition is met.

(A) Within 90 days after employment, every person selling or serving liquor in an establishment which has an "on-sale" license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee .

(B) Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.

(C) Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect, and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.

(D) No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

(E) Compliance with financial responsibility requirements of state law and of this chapter is a continuing condition of any license.

(F) Racial Discrimination - Clubs. No license to sell alcoholic beverages may be issued or renewed to a club which discriminates against members or applicants for membership or guests of members on the basis of race.

(G) Notice Posting. A premises license for the retail sale of alcoholic beverages must post and maintain in a conspicuous place within the licensed premise, one or more signs which read:

1) This establishment is prohibited by law from serving alcoholic beverage to a person who is under the age of 21 years or obviously intoxicated. Minnesota Statutes Chapter 340A.

2) A conspicuous place is a location clearly visible to the customers .

3) The signs must be at least 12 inches wide by 8 inches high, with letters at least one inch high in clear contrast with the background.

112.17 HOURS AND DAYS OF SALE.

A No sale of intoxicating liquor for consumption on the licensed premises may be made:

- 1) Between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday;
- 2) After 1:00 a.m. on Sundays, except as provided by a separate Sunday license;
- 3) Between 8:00 p.m. on December 24th and 8:00 a.m. on December 25th, except that when December 25 occurs on a Sunday on-sales on that day are governed as follows:

B. Intoxicating Liquor - Sunday Sales - On Sale. A licensee which holds an on-sale intoxicating liquor license may sell intoxicating liquor for consumption on the premises in conjunction with the sale of food between the hours of 10:00 a.m. on Sundays and 1:00 a.m. on Mondays, provided the licensee is in compliance with the Minnesota Clean Air Act.

C. No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

D. No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.

E. No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

F. Any violation of any condition of this section may be grounds for revocation or suspension of the license.

112.18 MINORS ON PREMISES.

No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person or dishwashing services or serving food.

112.19 RESTRICTIONS ON PURCHASE AND CONSUMPTION.

No person shall mix or prepare liquor for consumption in any place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of M.S. 340A.414 , as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.

112.20 SUSPENSION AND REVOCATION.

(A) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this chapter relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, M.S. 14.57 to 14.70, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

(B) The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this chapter or M.S. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:

(1) For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension, sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, the license shall be revoked.

(2) The license shall be suspended by the Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this chapter for at least the minimum periods as follows :

(a) For the first violation within any three-year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed

(b) For a second violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(c) For the third violation within any three-year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(d) For a fourth violation within any three-year period, the license shall be revoked.

(3) The Council shall select the day or days during which the license will be suspended.

(C) Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this chapter or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk, a hearing before the Council shall be granted within ten days. Any suspension under this division (B) shall continue until the Council determines that the financial responsibility requirements of state law and this chapter have again been met.

(0) The provisions pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this chapter.

CHAPTER 113: PEDDLERS AND SOLICITORS

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Definitions

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License suspension and revocation License transferability

Prohibited activities Exclusion by placard

113.01 DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PEDDLER. A person who goes from house-to-house, door-to-door, street-to-street, or any other type of place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise or other personal property that the person is carrying or otherwise transporting. The term **PEDDLER** shall mean the same as the term "hawker."

PERSON. Any natural individual, group, organization, corporation, partnership or association. As applied to groups, organizations, corporations, partnerships and associations, the term shall include each member, officer, partner, associate, agent or employee.

REGULAR BUSINESS DAY. Any day during which the city hall is normally open for the purpose of conducting public business. Holidays defined by state law shall not be counted as regular business days.

SOLICITOR. A person who goes from house-to-house, door-to-door, street-to-street, or any other type of place-to-place, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. The term shall mean the same as the term "canvasser."

TRANSIENT MERCHANT. A person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering, goods, wares, products, merchandise or other personal property and who does not remain or intend to remain in any one location for more than 14 consecutive days.

113.2 EXCEPTIONS TO DEFINITIONS.

(A) For the purpose of the requirements of this chapter, the terms **PEDDLER**, **SOLICITOR**, and **TRANSIENT MERCHANT** shall not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route.

(B) In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, shall be exempt from the definitions of *PEDDLERS*, *SOLICITORS*, and *TRANSIENT MERCHANTS*, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court-ordered sale. Exemption from the definitions for the scope of this chapter shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

113.3 LICENSING; EXEMPTIONS.

(A) *City license required.* No person shall conduct business as either a peddler, solicitor, a transient merchant without first having obtained a license from the city.

(B) *Application .* Application for a city license to conduct business as a peddler, solicitor or transient merchant shall be made at least 14 regular business days before the applicant desires to begin conducting business. Application for a license shall be made on a form approved by the City Council and available from the office of the City Clerk. All applications shall be signed by the applicant. All applications shall include the following information:

- (1) Applicant's full legal name.
- (2) All other names under which the applicant conducts business or to which applicant officially answers.
- (3) A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, and the like).
- (4) Full address of applicant's permanent residence.
- (5) Telephone number of applicant's permanent residence.
- (6) Full legal name of any and all business operations owned, managed or operated by applicant, or for which the applicant is an employee or agent.
- (7) Full address of applicant's regular place of business (if any).
- (8) Any and all business related telephone numbers of the applicant.
- (9) The type of business for which the applicant is applying for a license .
- (10) Whether the applicant is applying for an annual or daily license.
- (11) The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city (maximum 14 consecutive days).
- (12) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business.
- (13) A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal

statute or any local ordinance, other than traffic offenses.

(14) A list of the three most recent locations where the applicant has conducted business as a peddler or transient merchant.

(15) Proof of any requested county license.

(16) Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant.

(17) A general description of the items to be sold or services to be provided.

(18) All additional information deemed necessary by the City Council.

(19) The applicant's driver's license number or other acceptable form of identification.

(20) The license plate number, registration information and vehicle identification number for any vehicle to be used in conjunction with the licensed business and a description of the vehicle.

(D) *Fee.* All applications for a license under this chapter shall be accompanied by the fee established by the City as amended from time to time.

(E) *Procedure.* Upon receipt of the completed application and payment of the license fee, the City Clerk, within two regular business days, must determine if the application is complete. An application is determined to be complete only if all required information is provided. If the City Clerk determines that the application is incomplete, the City Clerk must inform the applicant of the required necessary information that is missing. If the application is complete, the City Clerk must order any investigation, including background checks, necessary to verify the information provided with the application. Within ten regular business days of receiving a complete application the City Clerk must issue the license unless there exist grounds for denying the license. If the City Clerk denies the license, the applicant must be notified in writing of the decision, the reason for denial, and of the applicant's right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a public hearing before the City Council. The City Council shall hear the appeal within 20 days of the date of the request. The decision of the City Council following the public hearing can be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari.

(F) *Duration.* An annual license granted under this chapter shall be valid for one calendar year from the date of issue. All other licenses granted under this chapter shall be valid only during the time period indicated on the license.

(G) *License exemptions.*

(1) Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this chapter.

113.4 LICENSE INELIGIBILITY.

The following shall be grounds for denying a license under this

chapter:

(A) The failure of the applicant to obtain and show proof of having obtained any required county license.

(B) The failure of the applicant to truthfully provide any of the information requested by the city as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application.

(C) The conviction of the applicant within the past five years from the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner. Those violations shall include but not be limited to burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm (against another person.

(D) The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant.

(E) The applicant is found to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than three complaints against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding 12 months, or three complaints filed against the applicant within the preceding five years.

113.5 LICENSE SUSPENSION AND REVOCATION.

(A) *Generally.* Any license issued under this section may be suspended or revoked at the discretion of the City Council for violation of any of the following:

(1) Fraud, misrepresentation or incorrect statements on the application form.

(2) Fraud, misrepresentation or false statements made during the course of the licensed activity.

(3) Conviction of any offense for which granting of a license could have been denied under law.

(4) Violation of any provision of this chapter.

(B) *Multiple persons under one license.* The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the

licensee shall serve as a suspension or revocation of each authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

(C) *Notice.* Prior to revoking or suspending any license issued under this chapter, the city shall provide the license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

(D) *Public hearing.* Upon receiving the notice provided in division (C) of this section, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the City Clerk within ten regular business days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within 20 days from the date of the request. Within three regular business days of the hearing, the City Council shall notify the licensee of its decision.

(E) *Emergency.* If, in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this chapter, the City Council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in division (C) of this section.

(F) *Appeals.* Any person whose license is suspended or revoked under this section shall have the right to appeal that decision to the Court.

113.6 LICENSE TRANSFERABILITY.

No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued.

113.7 PROHIBITED ACTIVITIES.

No peddler, solicitor or transient merchant shall conduct business in any of the following manners:

(A) Calling attention to his or her business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure.

(8) Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way.

(C) Conducting business in a way as to create a threat to the health, safety and welfare of any

individual or the general public.

(D) Conducting business before 7:00 a.m. or after 9:00 p.m.

(E) Failing to provide proof of license or registration, and identification, when requested; or using the license or registration of another person.

and any person exempt from the licensing requirements of this chapter with the city.

(F) Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor or transient merchant shall claim to have the endorsement of the city solely based on the city having issued a license or certificate of registration to that person.

(G) Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.

113.8 EXCLUSION BY PLACARD.

No peddler, solicitor or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor or transient merchant when the property is marked with a sign or placard at least four inches long and four inches wide with print of at least 48 point in size stating "No Peddlers, Solicitors or Transient Merchants," or "Peddlers, Solicitors, and Transient Merchants Prohibited, or other comparable statement. No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard under this section.

CHAPTER 114: TOBACCO REGULATIONS

Section: 114.01

DEFINITIONS AND INTERPRETATIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice versa. The term "shall" means mandatory and term "may" means permissive. The following terms shall have the definitions given to them:

SUBDIVISION 1. TOBACCO OR TOBACCO PRODUCTS:

"Tobacco" or "Tobacco Products" shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff; flowers, cavendish; shorts, plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

SUBDIVISION 2. SELF-SERVICE MERCHANDISING.

"Self Service Merchandising" shall mean open displays of tobacco, tobacco products, or tobacco related devices in any way where any person shall have access to the product with the assistance or intervention of an employee of the premises maintaining the self service merchandising. Self service merchandising shall not include vending machines.

SUBDIVISION 4. VENDING MACHINES.

"Vending Machine" shall mean any mechanical, electric or electronic or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco products or tobacco related devices.

SUBDIVISION 5. INDIVIDUALLY PACKAGED.

"Individual packaged" shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco, and tobacco products shall including, but not limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

SUBDIVISION 6. LOOSIES.

"Loosies" shall mean the common term used to refer to a single or individually packaged cigarette .

(SUBDIVISION 7. MINOR.

"Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

SUBDIVISION 8. RETAIL ESTABLISHMENT.

"Retail Establishment" shall mean any place of business where tobacco , tobacco products, or other tobacco related devices are available for sale to the general public. Retail establishments including, but not limited to, grocery stores, convenience stores, restaurants and bars.

SUBDIVISION 9. SALE.

A "Sale" shall mean any transfer of goods for money, trade, barter or other consideration.

SUBDIVISION 10. COMPLIANCE CHECKS .

"Compliance Checks" shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco , tobacco products and tobacco related devices are following and complying with the requirements of this ordinance . Compliance checks may involve the use of minors as authorized by this ordinance.

114.02

LICENSE.

No person shall sell or offer to sell any tobacco , tobacco products or tobacco related devices without first having obtained . / a license to do so from the City.

SUBDIVISION 1. APPLICATION.

An application for a license to sell tobacco , tobacco products or tobacco related devices shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the City deems necessary. Upon receipt of a completed application , the City Clerk shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the action complete.

SUBDIVISION 2. ACTION .

The Council may either approve or deny the license, or it may delay action for such

reasonable period of time as necessary to complete the investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Clerk shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the Council's decision .

SUBDIVISION 3. TERM.

All licenses issued under this Ordinance shall be valid for one calendar year from the date of issue.

SUBDIVISION 4. REVOCATION OR SUSPENSION .

Any license issued under this ordinance may be revoked or suspended provided in the Violations and Penalties section of this ordinance.

SUBDIVISION 5. TRANSFERS .

All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the Council.

SUBDIVISION 6. DISPLAY.

All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

SUBDIVISION 7. RENEWALS.

The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before expiration of the current license. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

114.03

FEES.

No license shall be issued under this ordinance until the appropriate license fees shall be paid in full. Fees shall be set from time to time by the City Council by Resolution. . .

BASIS FOR DENIAL OF LICENSE.

The following shall be grounds for denying the issuance or renewal of a license under this Ordinance, and if a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section.

a. The applicant is under the age of eighteen (18) years.

b. The applicant has been convicted within the past five (5) years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices.

c. The applicant has had a license to sell tobacco , tobacco products, or tobacco related devices revoked, in the City or any other place, within the preceding twelve (12) months of the date of application .

d. The applicant fails to provide any information required on the application, or

provides false or misleading information.

- e. The applicant is prohibited by Federal, State or other local law, ordinance, or other regulation, from holding such a license.
- f. The applicant has no established fixed place of business.

114.04

PROHIBITED SALES.

It shall be a violation of this Ordinance for any person to sell or offer to sell any tobacco , tobacco product or tobacco related device:

- a. To any person under the age of eighteen (18) years.
- b. By means of any type of vending machine.
- c. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of a licensed premises in order to receive the tobacco , tobacco product or tobacco related device. All tobacco, tobacco products and tobacco related devices shall be stored behind the counter or other area not accessible to customers .
- d. By means of "loosies" as defined in this Ordinance.
- e. Containing opium, morphine, jimson weed , bella donna , strychnos , cocaine, marijuana , or other type of deleterious, hallucinogenic, or toxic or controlled substance except nicotine and not naturally found in tobacco or tobacco products.
- f. By any other means or to any othe; person, prohibited by Federal. State or other local law, ordinance provision or other regulation.

114.05

RESPONSIBILITY.

All licenses under this Ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall also be considered a sale by the license holder, and each can be held responsible for any criminal and/or civil penalties imposed herein.

114.06

COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the City Police or other authorized City official during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks by engaging minors to enter the licensed premise to attempt to purchase tobacco , tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products or tobacco related devices when such items are obtained as a part of the compliance check .

114.07

OTHER ILLEGAL ACTS .

Unless otherwise provided, the following acts shall be a violation of this Ordinance.

SUBDIVISION 1. ILLEGAL POSSESSION.

It shall be a violation of this Ordinance for any minor to have in his or her possession any tobacco , tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the City.

SUBDIVISION 2 . ILLEGAL PROCUREMENT.

It shall be a violation of this Ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco , tobacco product or tobacco related device, and it shall be a violation of this Ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall also be a violation of this Ordinance for any person to sell or otherwise provide any tobacco , tobacco product or tobacco related device to any minor, and it shall further be a violat ion for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the City.

SUBDIVISION 3. USE OF FALSE IDENTIFICATION.

It shall be a violation of this Ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to rep:-esent an age older than the actual age of the person. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the City.

114.08

VIOLATIONS AND PENALTIES. SUBDIVISION 1. CRIMINAL PENALTY.

Any person, firm or corporation violating any of the provisions of this Ordinance shall be guilty of a misdemeanor . Each violation and every day in which a violation occurs or continues shall constitute a separate offense.

SUBDIVISION 2. CIVIL ENFORCEMENT.

In addition to any criminal penalty, the license holder shall be responsible for the conduct of its agents or employees while on the licensed premises. In addition to any criminal penalty any violation of this Chapter shall be considered an act of the license holder for purposes of imposing a civil penalty, license suspension, or revocation. Each 'Jiolation , and every day in which a violation occurs or continues, shall constitute a separate offense.

a. NOTICE OF VIOLATION. Upon the occurrence of a suspected violation, the City shall send to the license holder a written notice of the civil violation. The notice shall advise the license holder of the penalty of the license holder's right to request a hearing regarding the violation of

(this Ordinance.

b. CIVIL PENALTIES. Each license issued hereunder shall be subject to suspension or revocation of any provisions of this Chapter or the laws of the State of Minnesota as follows:

1. FIRST VIOLATION . The first violation of this Chapter shall be punishable by a civil penalty of at least \$150 .00 but no more than \$500 .00.

2. SECOND VIOLATION. A second violation of this Chapter within a 36 month period shall be punishable by a civil penalty of

\$700.00 and a suspension of the license of at least seven days but not more than

3. SUBSEQUENT VIOLATION . A third or subsequent violation of this Chapter within any 36 month period shall be punishable by the revocation of the license. Any licensee whose license is revoked under this Section shall not be eligible for renewal for a period of two license years after the revocation.

c. Any civil penalty, suspension or revocation or combination thereof under this Section does not preclude criminal prosecution under this ordinance or Minnesota statute section 609.685.

114.09

HEARING ON DENIAL OR VIOLATION .

1. HEARING. Following receipt of a notice of denial of license or a notice of violation and penalty, an applicant or license holder may request a hearing before the City Council. A request for a hearing shall be made by the applicant or license holder in writing and filed with the City within 10 days of the mailing of the notice of denial or alleged violation. Following receipt of a written request for hearing, the applicant or license holder shall be afforded an opportunity for a hearing before the Council. If a committee of the Council conducts the hearing it shall report its findings and make a recommendation to the full Council.

2. FINDINGS. If after the hearing the applicant or license holder is found ineligible for license, or in violation of this ordinance, the Council may affirm the denial, impose a fine, issue a suspension or revocation, or impose any combination thereof.

3. DEFAULT. If the applicant or license holder has been provided written notice of the denial or violation and if no request for a hearing is filed within the 10 day period, then the denial, penalty, suspension or revocation shall take immediate effect by default. The City shall mail notice of the denial, fine, suspension or revocation to the applicant or license holder. The City shall investigate compliance with the suspension or revocation.

114.10

EXCEPTIONS AND DEFENSES.

Nothing in this Ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

114.11

SEVERABILITY AND SAVING CLAUSE.

If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provisions of this ordinance .

114.12

RESTRICTIONS ON AGE OF CLERKS.

It shall be illegal for a retail establishment to cause or permit a minor to sell tobacco , tobacco products or tobacco related devices. It shall also be illegal for any minor to sell tobacco , tobacco products or tobacco related devices.

114.13

SIGNAGE.

Anyone holding a tobacco license under the provisions of this ordinance shall post and display in plain view of the general public on the licensed premises a sign indicating that it is illegal to sell tobacco, tobacco products or tobacco related devices to anyone under the age of eighteen (18) years and that the possession and use of such items by minors is also illegal under both State law and local ordinances. Said signs shall be of a type approved by City staff and issued to a retail establishment at the time that a license is obtained. The cost of said sign shall be included within the licensing fee.

114.14

POSTING, FILING AND PUBLICATION.

The City Clerk shall keep a copy of this Ordinance on file in the Clerk's Office and in the Washington County Library Wildwood Branch which the Council hereby designates as locations at which a copy is available for inspection by any person during regular office hours.

CHAPTER 116: REGULATING LAWFUL GAMBLING

Section:

- 116.01
- 116.02
- 116.03
- 116.04
- 116.05
- 116.06
- 116.07
- 116.08
- 116.09
- 116.10
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- 116.14

Adoption of state law by reference

City may be more restrictive than state law Purpose

Definitions Applicability

Lawful gambling prohibited Lawful gambling permitted Council approval

Local Permits

License and Permit display

Notification of material changes to application Hours of operation

Severability Penalty

116.1 ADOPTION OF STATE LAW BY REFERENCE.

The provisions of M.S. Ch.349, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, provisions relating to sales , and all other matters pertaining to lawful gambling, are hereby adopted by reference and are made a part of this chapter as if set out in full. It is the intention of the Council that all future amendments of M.S. Ch. 349 are hereby adopted by reference or referenced as if they had been in existence at the time this chapter was adopted.

116.2 CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized by the provisions of M.S. 349.213 , as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on gambling within its limits beyond those contained in MS. Ch. 349, as it may be amended from time to time.

116.3 PURPOSE.

The purpose of this chapter is to regulate lawful gambling within the city, to prevent its commercialization, to ensure the integrity of operations, and to provide for the use of net profits only for lawful purposes.

116.4 DEFINITIONS.

In addition to the definitions contained in M.S. 349.12 , as it may be amended from time to time, the following terms are defined for purposes of this chapter:

BOARD. The State of Minnesota Gambling Control Board.

ORGANIZATION. An organization licensed by the Board.

LOCAL PERMIT. A permit issued by the city.

116.05 APPLICABILITY.

This chapter shall be construed to regulate all forms of lawful gambling within the city except those forms of gambling activity which are defined as exclusions under M.S. 349.166, Subd. (1) & (2), subject to Section 116.09 below.

Raffles, if the value of all prizes awarded by the organization is a calendar years does not exceed \$1500.00.

116.6 LAWFUL GAMBLING PROHIBITED.

No person or organization shall conduct lawful gambling within the City of Dellwood except as permitted by Section 7 below.

116.7 LAWFUL GAMBLING PERMITTED.

Lawful gambling is permitted within the City provided it is conducted in accordance with M.S. 609.75-.763, inclusive, as they may be amended from time to time; M.S. 349.11-.23, inclusive, as they may be amended from time to time; and this Ordinance.

116.8 COUNCIL APPROVAL

Lawful gambling authorized by M.S. 349.11-.23, inclusive, as they may be amended from time to time, shall not be conducted unless approved by the Council, subject to the provisions of this ordinance and state law.

116.9 LOCAL PERMITS.

(A) No organization shall conduct gambling excluded or exempted from state licensure requirements by M.S. 349.166 , as it may be amended from time to time, without a valid permit from the City. This section shall not apply to temporary raffles described in section 116.05 above.

(B) Applications for issuance or renewal of a local permit shall be on a form prescribed by the Board.

(C) The fee for a local permit shall be established by Resolution of the City Council. The fee shall be submitted with the application for a local permit.

(D) The Council may disapprove an application for issuance of a gambling permit for any of the following reasons:

(1) Violation by the gambling organization of any state statute, state rule or city ordinance relating to gambling within the last three years.

(2) Violation by the on-sale establishment or organization allowing use of its premises for gambling of any state statute, state rule or city ordinance relating to the operation of the establishment, including, but not limited to, laws relating to the operation of the establishment, laws relating to alcoholic beverages, gambling, controlled substances and protection of public safety within the last three years.

(3) The organization has not been in existence in the city for at least three consecutive years prior to the date of application.

(4) The organization does not have at least 30 active members.

(5) Failure of the applicant to pay permit fee provided by division (C) of this section within the prescribed time limit.

(6) Operation of gambling at the site would be detrimental to health, safety, and welfare of the community.

(E) Local permits shall be valid only for the date or dates specified in the permit.

116.10 LICENSE AND PERMIT DISPLAY.

All permits issued under state law or this chapter shall be prominently displayed on the premises where gambling is being conducted.

116.11 NOTIFICATION OF MATERIAL CHANGES TO APPLICATION.

An organization holding a state issued premises permit or local permit shall notify the City within 10 days in writing whenever any material change is made in the information submitted on the application.

116.12 HOURS OF OPERATION.

Lawful gambling shall not be conducted between 1:00 a.m. and 8:00 a.m. on any day of the week.

116.13 SEVERABILITY.

If any provision of this Ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

116.14 PENALTY

A violation of the provisions of this Ordinance constitute a misdemeanor offense punishable by a fine up to \$1000, incarceration for up to 90 days, or both, plus the costs of prosecution. In addition, violations shall be

reported to the Board and recommendation shall be made for suspension, revocation, or cancellation of an organization's license.

Section

CHAPTER 117: **GARAGE OR RUMMAGE SALES**

117.1 Definition .

117.2 Restrictions and prohibitions

117.3 Exceptions

117.4 Penalty

117.1 **DEFINITION.**

The following term, as used in this chapter, shall have the meaning stated:

GARAGE OR RUMMAGE SALE. Any display and sale of personal property, conducted on premises located in the City by the occupant and which garage or rummage sale does not require a business license or make taxable sales, leases or services.

117.2 **RESTRICTIONS AND PROHIBITIONS .**

(A) None of the items offered for sale shall have been obtained for resale or received on consignment for sale.

(B) Any garage or rummage sale (community or neighborhood sale) shall be conducted solely within the boundaries of the property owned or occupied by the occupant who is conducting the sale.

(C) No garage or rummage sale shall be conducted during any part of more than three consecutive days.

(D) No garage or rummage sale may be conducted before 7:00 a.m. or after 8:00 p.m.

(E) Any related signage shall be limited to the premises upon which the sale is to take place and shall be removed at the termination of the sale. Signs shall be limited to four square feet.

(F) There shall be no more than one sale conducted at the same premises in any calendar year.

117.3 **EXCEPTIONS.**

This chapter shall not apply to any sale under court order, nor to any bona fide auction sale, nor to a sale of farm or garden products by the person producing same, on the property of the person producing the products.

117.4 **PENALTY.**

It is unlawful for any person to conduct a garage or rummage sale in violation of any of the provisions of this chapter. A violation of this chapter is a misdemeanor , to be punished as provided by law.

CHAPTER 118: REGULATION OF PUBLIC DANCES

Section

Public Dances

- 118.1 Regulation of public dances
- 118.2 Definitions
- 118.3 Permit required
- 118.4 Application for permit
- 118.5 Insurance
- 118.6 Location
- 118.7 Permit to be posted
- 118.8 Liquor license required
- 118.9 Licensed police officer presence
- 118.10 Hours
- 118.11 Minors prohibited
- 118.12 Certain behavior prohibited
- 118.13 Lighting
- 118.14 Noise

118.01 REGULATION OF PUBLIC DANCES.

All public dances held in this city shall be conducted in accordance with the provisions of this chapter.

118.2 DEFINITIONS.

The terms stated below shall have the following meanings:

PUBLIC DANCE. Any dance where the general public may participate, whether or not a charge for admission for dancing is made.

PUBLIC DANCING PLACE. Any room or space or other area, whether indoors or outside, which is open to the general public for the purpose of participating in public dancing.

118.3 PERMIT REQUIRED.

No person shall conduct a public dance in this city unless a permit has been obtained from the City Clerk prior to the holding of the dance. The fees for a permit shall be as established by the City Council from time to time. The City Council shall establish criteria for determining the number of licensed peace officers required to be present at any dance. No permit shall be issued until the Applicant demonstrates that Section 118.09 herein has been addressed.

118.04 APPLICATION FOR PERMIT.

Any person desiring a permit to hold a public dance in this city shall submit an application for a permit on the form provided by the City Clerk, submitted to the City Clerk at least ten days before the date of the proposed dance. The application shall set forth the name and address of the applicant, who shall be the person responsible for conducting the public dance, and any business, committee or organization sponsoring the dance, the place where the dance is to be held, the date of the dance and the time of its beginning and end. Proof of all insurance required by this chapter shall be submitted with the application and no permit shall be issued until proof of insurance has been received. A request for any use of a city building or other city property shall be included with the permit application, and no permit shall be issued until the fees for the use of the city building or other city property have also been paid.

118.05 INSURANCE.

All insurance policies required for the event, including any insurance required by law for the sale of alcoholic beverages, shall list the city as a named insured and provide a provision to defend, indemnify and hold harmless the city and any of its employees from any claims arising from the event.

118.06 LOCATION.

The applicant shall make sure that adequate parking is available for the persons wishing to attend the dance and make sure that the location is safe and accessible. This information shall also be provided to the City Clerk before a permit shall be issued.

118.07 PERMIT TO BE POSTED.

When a permit is issued, the holder of the permit shall post the permit in a prominent location on the premises on which the dance is to be held during the time the dance is occurring. The applicant shall be present at all times while the dance is occurring.

118.8 LIQUOR LICENSE REQUIRED.

No person shall give, hold, conduct or permit any public dance where liquor will be served, as defined in M.S. Chapter 340A, without obtaining a license from the city.

118.9 LICENSED PEACE OFFICER PRESENCE.

No public dance shall occur without at least one licensed peace officer or more, if more are required by the City Council, who shall be present at the public dancing place during the duration of the dance and after the dance, until all of the participants have left the public dancing place.

118.10 HOURS.

No public dance shall occur between the hours of 1:00 a.m. and 12:00 noon.

118.11 MINORS PROHIBITED.

No person under the age of 21 shall be allowed to be present by the permit holder or any peace officer at a public dance where alcohol is sold or consumed, unless accompanied by a parent or guardian.

118.12 CERTAIN BEHAVIOR PROHIBITED.

No person present at any public dance shall engage in any disorderly conduct, as defined by M.S. 609.72, as it may be amended from time to time, and any disorderly person shall be immediately removed from the dance by the peace officer present at the public dancing place. Should a substantial number of persons at the public dance engage in disorderly conduct, the peace officer present shall terminate the dance and remove all persons from the public dancing place.

118.13 LIGHTING.

In order to protect the safety of persons attending a public dance, public dancing places shall be

adequately illuminated and dancing therein while lights are extinguished, dimmed or turned low so as to give inadequate or imperfect illumination is hereby prohibited. All exit areas shall be illuminated at all times during the public dance with light having intensity of not less than one footcandle at floor level. Illumination of less than *0.5* foot-candles in any area where dancing is occurring, permitted or encouraged is prohibited.

118.14 NOISE.

All public dances shall be subject to the provisions of this code regulating noise pollution.