STAPLES

CITY

CODE

(UPDATED THROUGH ORDINANCE 491)
STAPLES CITY CODE

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Appendix A. Staples City Charter
Staples City Code

CHAPTER 1 – GENERAL PROVISIONS

SECTION 1.1 MISCELLANEOUS.

Sec. 1.1.01. Citation. This Code of ordinances shall be known as The Staples City Code and may be so cited.

Sec. 1.1.02. Additions. New ordinances proposing amendments or additions to the Code shall be assigned appropriate Code numbers and shall be incorporated into the Code as of their effective date. Reference or citation to the Code shall be deemed to include such amendments and additions. When an ordinance is integrated into the Code, there may be omitted from the ordinance the title, enacting clause, section numbers, definitions of terms identical to those contained in this ordinance, the clause indicating date of adoption, and validating signatures and dates. In integrating ordinances into the Code, the Clerk, in cooperation with the City Attorney, may correct obvious grammatical, punctuation, and spelling errors; change reference numbers to conform with sections and chapters; substitute figures for written words and vice versa; substitute dates for the words “the effective date of this ordinance”; and perform like actions to insure a uniform code of ordinances without, however, altering the meaning of the ordinances enacted.

Sec. 1.1.03. Title Headings. Chapter, part, section, subdivision, and other titles shall not be considered part of the subject matter of this Code but are intended for convenience only and not necessarily as comprehensive titles.

Sec. 1.1.04. Copies. Copies of this Code shall be kept in the office of the Clerk for public inspection or sale for a reasonable charge.

SECTION 1.2 DEFINITIONS. Unless the context clearly indicates otherwise, the following words and phrases have the meaning given them in this section:

“Administrator” means the City Administrator;

“City” means the City of Staples;

“Clerk” means the City Clerk;

“Council” means the City Council;

“Person” means any natural individual, firm, partnership, association, or corporation. As applied to partnerships or associations, the term includes the partners or members; as applied to corporations, the term includes the officers, agents or employees;

“State” means the State of Minnesota.
SECTION 1.3 STATUTORY RULES. The definitions and rules of construction, presumptions, and miscellaneous provisions pertaining to construction contained in Minnesota Statutes, Chapter 645 are adopted by reference and made a part of this Code. As so adopted, references in that chapter to laws and statutes mean provisions of this Code and references to the legislature mean the Council.

SECTION 1.4 EXISTING RIGHTS AND LIABILITIES. The repeal of prior ordinances and adoption of this Code are not to be construed to affect in any manner rights and liabilities existing at the time of repeal and the enactment of this Code. Insofar as provisions in this Code are substantially the same as pre-existing ordinances, they shall be considered as continuations thereof and not as new enactments. Any act done, offense committed, or right accruing, or liability, penalty, forfeiture or punishment incurred or assessed prior to the effective date of this Code is not affected by the enactment of the Code.

SECTION 1.5 HEARINGS.

Sec. 1.5.01. General. Unless otherwise provided in this Code, or by law, every public hearing required by law, ordinance, or resolution to be held on any legislative or administrative matter shall be conducted in accordance with this section.

Sec. 1.5.02. Notice. Every hearing shall be preceded by 10 days’ mailed notice to all persons entitled thereto by law, ordinance, or regulation unless only published notice is required. The notice shall state the time, place and purpose of the hearing. Failure to give the notice or defects in it shall not invalidate the proceedings if a good faith effort has been made to comply with this section.

Sec. 1.5.03. Conduct of Hearing. At the hearing, each party in interest shall have an opportunity to be heard and to present such evidence as is relevant to the proceeding. The Council may adopt rules governing the conduct of hearings, records to be made, and such other matters as it deems necessary.

Sec. 1.5.04. Record. Upon the disposition of any matter after hearing, the Council shall have prepared a written summary of its findings and decisions and enter the summary in the official Council minutes. The failure of the Council to prepare such a written summary shall not invalidate the disposition of the matter by the Council.

SECTION 1.6 PENALTIES.

Sec. 1.6.01. Petty Offenses. Whenever an act or omission is declared by this Code to be a petty offense or a petty misdemeanor, any person violating the provision shall, upon conviction, be subject to a fine of not more than $100.00.

Sec. 1.6.02. General Misdemeanors. In any other case, unless another penalty is expressly provided in this Code, any person violating any provision of this Code, or any rule or regulation adopted in pursuance thereof, or any other provision of any Code adopted in this Code by reference, including any provision declaring an act or omission to be a
misdemeanor, shall, upon conviction, be subject to a fine of not more than $500.00 or imprisonment for a term not to exceed 90 days or both, plus, in either case, the costs of prosecutions.

Sec. 1.6.03. Separate Violations. Unless otherwise provided, each act of violation and every day on which a violation occurs or continues constitutes a separate offense.

Sec. 1.6.04. Application to City Personnel. The failure of any officer or employee of the City to perform any official duty imposed by this Code shall not subject the officer or employee to the penalty imposed for violation, unless a penalty is specifically provided for such failure.

SECTION 1.7 SEPARABILITY. If any ordinance or part thereof in the Staples City Code or hereafter enacted is held invalid or suspended, such invalidity or suspension shall not apply to any other part of the ordinance or any other ordinance unless it is specifically provided otherwise.

SECTION 1.8 STAPLES CITY CHARTER. For convenience purposes, the Staples City Charter, as adopted on November 2, 1976 (revised November 5, 2002) is hereby incorporated within this Code. The entire City Charter is found at Appendix A to this Code, which is attached hereto.
CHAPTER 2 – ADMINISTRATION

SECTION 2.1 CITY COUNCIL AND OFFICERS. See Staples City Charter – Appendix A.

SECTION 2.2 ADMINISTRATIVE CODE.

Sec. 2.2.01. Purpose. In order to clearly define the authority and responsibility for all offices and employees of the City, to provide for the proper coordination and control of activities, and to create proper lines of communication within the administrative service of the City, there is hereby established an administrative Code for the City of Staples in accordance with Section 6.02, Subd. 7 of the City Charter.

Sec. 2.2.02. City Administrator. In accordance with Sections 2.01 and 6.01 of the City Charter there is hereby established the office of City Administrator of the City of Staples. The City Administrator shall be appointed by the City Council and shall have the following duties:

Subd. a. He/She shall be responsible for the proper administration and preservation of public health and safety of property and the management of all municipally-owned utilities, and be in responsible charge of the maintenance, care, construction or otherwise of all streets, bridges, sewers, parks, playgrounds, buildings and all other municipally-owned structures.

Subd. b. He/She shall issue administrative manuals, orders, rules, directives, and regulations not inconsistent with the Charter, the Ordinances of the City, and State law. Such rules, manuals, orders, directives and regulations shall outline the general and specific procedures for the administration of the City’s activities.

Subd. c. He/She shall recommend to the Council such measures and policies as he/she may determine necessary or expedient for the best interest of the City.

Subd. d. He/She shall keep the Council advised of the financial condition and needs of the City and prepare and submit annually to the Council a City budget that shall be compiled from the various departmental budget requests.

Subd. e. He/She may temporarily reassign personnel who can be spared from one department to another department in need of additional help.

Subd. f. He/She shall perform such additional duties as may be assigned by the Council or by Ordinance.

Subd. g. He/She may assign work projects to the proper department or departments.

Sec. 2.2.03. Departments. In order to provide for the economic, efficient and prompt discharge of the administrative functions of the City, the City government shall be divided into six operating departments or agencies as follows:
Departmental Organization

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<td>2. Fire</td>
<td>Chief</td>
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<td>3. Public Works</td>
<td>Public Works Director</td>
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<td>4. Library</td>
<td>Librarian</td>
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<td>5. Community Services</td>
<td>Park and Recreations Director</td>
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<tr>
<td>6. Police</td>
<td>Chief</td>
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Sec. 2.2.04. Service. Those filling the following offices within the administrative service shall be considered as officers of the City: City Administrator, City Attorney, City Clerk, City Assessor, City Engineer, all departmental heads and such others as the Council may designate by ordinance or resolution.

Sec. 2.2.05. Oaths. Each of the following officers within the administrative service shall be required to take an oath of office before entering upon the discharge of their duties, which oath shall be on file with the City Clerk:

Subd. a. The Mayor, Councilmembers and all other officers of the City within the administrative service.

Subd. b. Every member of the Police Department including special or part-time police officers, which the City might find necessary to appoint.

Subd. c. Every member of the Fire Department.

Subd. d. Such other officers or employees who may be designated by resolution of the City Council.

Sec. 2.2.06. Duties. Each officer shall perform all duties required of his/her office by the State law, the City Charter, the Code and Ordinances of the City and such other duties not in conflict therewith as may be requested by the City Administrator, subject to the direction of the City Council and may from time to time serve as head of one or more departments or subdivisions of the administrative service. Each department head shall:

Subd. a. Be immediately responsible to the City Administrator for the effective administration of their respective departments and all activities assigned thereto and to that end they shall have the power to establish work rules and to initiate disciplinary proceedings with approval of the City Administrator.

Subd. b. Keep informed as to the latest practices in their particular field and shall inaugurate, with the approval of the City Administrator, such new practices as appear to be of benefit to the service and to the public.

Subd. c. Submit as requested reports of the activities of their departments to the City Administrator.
Subd. d. Establish and maintain a system of filing and indexing records and reports in sufficient details to furnish all information necessary for proper control of departmental activities and to form a basis for the periodic reports to the City Administrator.

Subd. e. Be responsible for the proper maintenance of all City property and equipment used in the department.

Subd. f. Cooperate with each other and furnish upon the request of the City Administrator any other department such service, labor and material as may be requisitioned by the head of such department and as its own facilities permit through the same procedure and subject to the same audit and control as other expenditures are incurred.

Subd. g. Be responsible for recommending to the City Administrator changes in codes, ordinances, and internal departmental organizations, which will improve the operation of their departments.

Subd. h. Be responsible for submitting an annual budget request to the City Administrator, which will include proposed additions or deletions in staff adjustments, in salary schedules and additions to plant and equipment.

Subd. i. Have responsibilities for keeping the City Administrator advised to the programs and policies of other governmental agencies, which might affect the City’s operations within the area of his/her responsibility.

Sec. 2.2.07. Annual Contracts. The following positions shall be filled by contract renewable each year: City Attorney, City Engineer, and City Assessor.

Sec. 2.2.08. Administration Department. The Administration Department shall be headed by the City Clerk and shall be responsible for the following:

Subd. a. Custody disbursement, investment and accounting of all City funds. The accounting and reporting of cash balances and budget appropriations.

Subd. b. The issuance of licenses and permits.

Subd. c. Recording and custody of official documents and legal publications.

Subd. d. The administration of elections.

Subd. e. Such additional duties as may be properly assigned.

Sec. 2.2.09. Public Works. The Public Works Department shall be supervised by the Public Works Director with responsibilities for:
Subd. a. Construction of street improvement projects as assigned by the City Administrator.

Subd. b. Maintaining all automotive equipment of the City.

Subd. c. Maintaining, cleaning and repairing all City-owned streets, storm sewers, sidewalks, parking lots, bridges and culverts.

Subd. d. Maintaining, cleaning and repairing all sanitary sewer lines.

Subd. e. Removing snow from streets, bridges, public sidewalks, City-owned parking lots and runways at the airport, and any other areas by contract.

Subd. f. Performing such park work as assigned by the City Administrator.

Subd. g. Planning, organizing and directing the activities of the electrical distribution system and related operations.

Subd. h. Planning, organizing and directing the operation of the water plant.

Subd. i. Maintenance and construction of the water distribution system.

Subd. j. Supervise the operation of the sewage treatment plant.

Sec. 2.2.10. Community Services. The Community Services Department shall be headed by the City Administrator, and shall have responsibilities for the following:

Subd. a. Development and operation of all City parks.

Subd. b. Maintenance of all City-owned parks, playgrounds and tennis courts.

Subd. c. Maintenance and operation of the Community Center.

Subd. d. To plan, promote, organize and supervise a comprehensive recreation program for the benefits of the residents of the City of Staples.

Subd. e. To supervise the use of all City recreational, cultural or social activity with approval of the City Council, which will employ the leisure time of the citizens in a wholesome, constructive manner.

Sec. 2.2.11. Repealed.

Sec. 2.2.12. Police Department. The Police Department shall be headed by the Police Chief with responsibilities for:

Subd. a. Efficient operation of the Department.
Subd. b. See that order is maintained in the City.

Subd. c. That laws and ordinances are enforced.

Subd. d. And take necessary measures to prevent crime and to protect lives and property.

Subd. e. The training, assignment, supervision and discipline of all department personnel.

Subd. f. See that proper records are kept within the Police Department.

Sec. 2.2.13. Fire Department. The Fire Department shall be headed by the Fire Chief with the responsibilities for the prevention of fires and the protection of life and property against fires.

Sec. 2.2.14. Library Department. The Library Department shall be headed by the Librarian who shall be responsible for the following:

Subd. a. Selection of new books and periodicals.

Subd. b. The care, rebinding and cataloging of all books and periodicals.

Subd. c. The care and maintenance of all library property and equipment.

Subd. d. Such additional duties as may be properly assigned.

Sec. 2.2.15. Boards and Commissions. In accordance with Section 2.02 of the City Charter, there is hereby established the following boards and commissions, with at least one council member on each such board as stated in Section 2.02. These boards and commissions shall advise the council with respect to any municipal function or activity. A council member may serve on at least one advisory board or committee and is encouraged to do so.


1. Five members serving a three-year term.
2. Appointments shall be two the first year, two the second year and one council member.

Subd. b. Airport Board.

1. Five members, each serving a four-year term.
2. Appointments shall be one each year, with the council member making the fifth member.
Subd. c.   (Deleted as of 2-19-98).


1. Seven members, each serving a three-year term, except that the appointments made in January 2003 shall be as follows: Two members appointed for a two-year term, three members appointed for three-year terms, and two members appointed for five-year terms.

Subd. e.  Board of Adjustment.

1. Three members, one-year term each.
2. All members appointed each year.
3. The membership requirements of Sec. 5.6.11 shall be adhered to.

Subd. f.  Repealed.

Subd. g.  Community Services Board.

1. Seven members, each serving a three-year term.
2. One member shall be a City Council member, and one member shall be a senior citizen.
3. One member may be a high school or college student at least 16 years of age.
4. A member shall be a senior citizen at least 55 years of age.

Subd. h.   (Deleted as of 1-1-03).

Subd. i.   (Deleted as of 1-1-03).

Subd. j.  Housing and Redevelopment Authority Board.

1. Five members, each serving a five-year term, with one member appointed November 1 of each year.

Subd. k.  The appointments for all board and commission members shall be made at the first council meeting in January of each year, except for the Housing and Redevelopment Authority Board.

Subd l.  Vacancies; any vacancy occurring in the membership of any board or commission shall be filled for the remainder of the unexpired term within six weeks of vacancy.

Subd. m.  The City Council may remove any member for cause.

Subd. n.  Forestry and Beautification Board.
1. Seven members, each serving a three-year term, except that the appointments made in January 2003 shall be as follows: Two members appointed for a one-year term, three members appointed for two-year terms, and three members appointed for three-year terms.

2. Subdivision k., l., and m. of Section 2.2.15 of the Code shall be incorporated as part of the rules of the Board.

Subd. o. Repealed.
CHAPTER 3 – CIVIL DEFENSE
SECTION 3.1 POLICY AND PURPOSE.

Sec. 3.1.01. Because of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake or other natural causes, and in order to insure that preparations of this City will be adequate to deal with such disasters, and generally to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of the people of this City, it is hereby found and declared to be necessary:

Subd. a. To establish a City civil defense organization.

Subd. b. To provide for the exercise of necessary powers during civil defense emergencies and the time of a natural disaster.

Subd. c. To provide for the formulation of necessary plans and training to meet the requirements of the City missions.

Subd. d. To provide for the rendering of mutual aid between this City and other political subdivisions of this state and of other states with respect to the carrying out of civil defense functions.

Sec. 3.1.02. It is further declared to be the purpose of this resolution and the policy of the City that all civil defense functions of this City be coordinated to the maximum extent practicable with the comparable functions of the Federal government, of this State, and municipalities of the City, and of private agencies of every type, to the end that the most effective preparations and use may be made of the nation’s manpower, resources, and facilities for dealing with any disaster that may occur.

SECTION 3.2 DEFINITIONS. Unless the context clearly indicates otherwise, the following words and phrases have the meaning given them in this section:

“Civil Defense” means the preparation for and carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters caused by acts of nature, enemy attack, sabotage or other hostile action, or from fire, flood, earthquake or other natural causes. These functions include, without limitations, firefighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection, together with all other activities necessary or incidental to preparation for and carrying out of the foregoing functions.
“Civil Defense Emergency” means an emergency declared by the Governor under the provisions of Minn. Stat. § 12.31 as amended, or an emergency declared by the county board under Section 3.6 of this resolution.

“Civil Defense Forces” means any personnel employed by the City and any other volunteer or paid member of the City defense organization engaged in carrying on civil defense functions in accordance with the provisions of this resolution of any rule or other thereunder.

**SECTION 3.3   ESTABLISHMENT OF CIVIL DEFENSE AGENCY.** There is hereby created within the City government a Civil Defense Agency, which shall be under the supervision and control of a coordinator of civil defense, hereinafter called the Coordinator.

The Coordinator shall be appointed by the City Council for an indefinite term and may be removed by them at any time. The Coordinator may be compensated at a rate to be determined by the City Council and he/she may be paid his/her necessary expenses. The Coordinator shall have direct responsibility for the organization, administration, and operation of the Civil Defense Agency, subject to the direction and control of the Mayor. The Civil Defense Agency shall be organized into such divisions and bureaus, consistent with State, county and local civil defense plans, as the director deems necessary to provide for the efficient performance of local civil defense functions during a civil defense emergency. The Civil Defense Agency shall perform civil defense functions outside the City as may be required pursuant to the provisions of the Minnesota Civil Defense Act of 1951 as amended, or this ordinance.

**SECTION 3.4    POWERS AND DUTIES OF THE COORDINATOR.**

**Sec. 3.4.01.** The Coordinator, with the consent of the City Council, shall represent the City on any regional or State organization for civil defense. He/She shall develop proposed mutual aid agreements with other political subdivisions within or outside the State for reciprocal civil defense aid and assistance in a civil defense emergency too great to be dealt with unassisted, and he/she shall present such agreements to the Council for its action. Such arrangements shall be consistent with the State Civil Defense Plan and during a civil defense emergency, it shall be the duty of the Civil Defense Agency and civil defense forces to render assistance in accordance with the provisions of such mutual aid arrangements. Any mutual aid arrangement with a political subdivision of another State shall be subject to the approval of the Governor.

**Sec. 3.4.02.** The Coordinator shall make such studies and surveys of the manpower, industries, resources, and facilities of the City including Fallout Shelters as he/she deems necessary to determine their adequacy for civil defense, and to plan for their most efficient use in time of a civil defense emergency.

**Sec. 3.4.03.** The Coordinator shall prepare a comprehensive general plan for the civil defense of the City, which will include a Community Shelter Plan utilizing the established Fallout Shelters, and shall present such plan to the City Council for its approval. When the City Council has approved the Plan by resolution, it shall be the duty of all municipal agencies and all civil defense forces of the village to perform the duties and functions assigned by the Plan as approved. The Plan may be modified in like manner from time to time. The Coordinator shall coordinate the civil defense activities of the City to the end that
they shall be consistent and fully integrated with the civil defense plans of other political subdivisions within the State.

**Sec. 3.4.04.** In accordance with the State, County and City Civil Defense Plan, the Coordinator shall institute such training programs and public information programs and shall take all other preparatory steps, including the partial or full mobilization of civil defense forces in advance of actual disaster, as may be necessary to the prompt and effective operation of the City Civil Defense Plan in time of a civil defense emergency. He/She may, from time to time, conduct such practice air-raid alerts or other civil defense exercises as he/she may deem necessary.

**Sec. 3.4.05.** The Coordinator shall utilize the personnel, services, equipment, supplies, and facilities of existing departments and agencies of the City to the maximum extent practicable. The officers and personnel of all such departments and agencies shall, to the maximum extent practicable, cooperate with and extend such services and facilities to the local Civil Defense Agency and to the Governor upon request. The head of each department and agency, in cooperation with and under the direction of the director, shall be responsible for the planning and programming of such civil defense activities as will involve the utilization of the facilities of this department or agency.

**Sec. 3.4.06.** The Coordinator shall, in cooperation with existing City departments and agencies affected, organize, recruit and train Fallout Shelter Managers, Radiological Monitors, police reserves, rescue personnel, auxiliary firemen, emergency medical personnel, and any other personnel that may be required on a volunteer basis to carry out the civil defense plans of the City and the State. To the extent that such emergency personnel are recruited to augment a regular City department or agency for civil defense emergencies, they shall be assigned to such department or agency for purposes of administration and command. The Coordinator may dismiss any civil defense volunteer at any time and require him/her to surrender any equipment and identification furnished by the City.

**Sec. 3.4.07.** Consistent with the Civil Defense Plan, the Coordinator shall provide and equip emergency hospitals, casualty stations, ambulances, canteens, evacuation centers, and other facilities or conveyances for the care of the injured or homeless persons.

**Sec. 3.4.08.** The Coordinator shall carry out all orders, rules and regulations issued by the Governor pertaining to civil defense.

**Sec. 3.4.09.** The Civil Defense Coordinator shall direct and coordinate the general operations of all local civil defense forces during a civil defense emergency in conformity with controlling regulations and instructions of State Civil Defense authorities. The heads of departments and agencies shall be governed by his/her orders in respect thereto.

**Sec. 3.4.10.** Consistent with the Civil Defense Plan, the Coordinator shall provide and equip at some suitable place in the City an Emergency Operating Center and, if required by the local Civil Defense Plan, auxiliary centers to be used during a civil defense emergency as headquarters for directions and controls of civil defense forces. He/She shall arrange for the
installation at the Emergency Operating Center of necessary facilities for communication with and between heads of civil defense divisions, the stations and operating units of municipal services and other agencies concerned with civil defense and for communication with other communities and Emergency Operating Centers, within the surrounding area and with the Federal and State agencies concerned.

Sec. 3.4.11. During the first 30 days of a civil defense emergency, if the Legislature is in session or the Governor has coupled his/her declaration of the emergency with a call for a special session of the Legislature, the Coordinator may, when necessary to save life or property, require any person, except members of the Federal or State military forces and officers of the State or any other political subdivision, to perform services for civil defense purposes as he/she directs; and he/she may commandeer, for the time being, any motor vehicle, tools, appliances, or any other property, subject to the owner’s right to just compensation as provided by law.

SECTION 3.5 GENERAL PROVISIONS ON CIVIL DEFENSE WORKERS.

Sec. 3.5.01. Civil defense volunteers shall be called into service only in case of a civil defense emergency or a natural disaster for which the regular municipal forces are adequate or for necessary training and preparation for such emergencies. All volunteers shall serve without compensation.

Sec. 3.5.02. Each civil defense volunteer shall be provided with such suitable insignia or other identification as may be required by the Coordinator. Such identification shall be in a form and style approved by the federal government. No volunteer shall exercise any authority over the person except an authorized volunteer shall use the identification of a volunteer or otherwise represent himself/herself to be an authorized volunteer.

Sec. 3.5.03. No civil defense volunteer shall carry any firearm while on duty except on written order of the Chief of the Police Department.

Sec. 3.5.04. Personnel procedures of the City applicable to regular employees shall not apply to volunteer civil defense workers but shall apply to paid employees of the Civil Defense Agency.

SECTION 3.6 EMERGENCY REGULATIONS.

Sec. 3.6.01. When used in this section, the term “civil defense emergency” includes, in addition to the meaning given in State law disasters caused by fire, flood, windstorm or other natural causes.

Sec. 3.6.02. Whenever necessary to meet a Civil Defense emergency or to prepare for such an emergency for which adequate regulations have not been adopted by the Governor or the City Council, the Mayor may by proclamation promulgate regulations, consistent with applicable Federal or State law or regulations, respecting: Protection against nuclear missiles; the sounding of attack warning; the conduct of persons and the use of property
during emergencies; the repair, maintenance, and safeguarding of essential public services; emergency health, fire, and safety regulations, trial drills, or practice periods required for preliminary training; and all other matters that are required to protect public safety, health and welfare in Civil Defense emergencies.

Sec. 3.6.03. Every proclamation of emergency regulations shall be in writing and signed by the Mayor; shall be dated; shall refer to the particular civil defense emergency to which it pertains, if so limited; and shall be filed in the office of City Administrator/Clerk, where a copy shall be kept posted and available for public inspection during business hours. Notice of the existence of such regulation and its availability for inspection at the City Administrator/Clerk’s office shall be conspicuously posted at the front of the City Hall or other headquarters of the City and at such other places in the affected area as the Mayor shall designate in the proclamation. Thereupon the regulation shall take effect immediately or at such later time as may be specified in the proclamation. By like proclamation, the Mayor may modify or rescind any such regulation.

Sec. 3.6.04. The City Council may rescind any such regulation by resolution at any time. If not sooner rescinded, every such regulation shall expire at the end of 30 days after its effective date or at the end of the civil defense emergency to which it relates, whichever occurs first. Any ordinance, rule, or regulation inconsistent with an emergency regulation promulgated by the Mayor shall be suspended during the period of time and to the extent that such conflict exists.

During the civil defense emergency, the City is, notwithstanding any statutory or charter provision to the contrary, empowered, through its governing body acting within or without the corporate limits of the City, to enter into contracts and incur obligations necessary to combat such disaster by protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. The City may exercise such powers in the light of emergencies of the disaster without compliance with time-consuming procedures and formalities prescribed by law pertaining to performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, limitations upon tax levies; and the appropriation and expenditure of public funds including but not limited to, publication and ordinances and resolutions, publication of calls for bids, provisions of civil service laws and rules, provisions relating to low bids, and requirements for budgets.

Sec. 3.6.05. During a civil defense emergency, the Mayor is authorized to contract on behalf of the City for services or for the purchase of merchandise or materials where the amount of the contract or purchase does not exceed $2,500.00. The Mayor may take such action without prior approval of the Council, and without compliance with regular purchasing and bidding procedures, but all claims resulting therefrom shall be audited and approved by the Council as in the case of other purchases and contracts.

SECTION 3.7 CIVIL DEFENSE AGENCY PROCEDURE.

Sec. 3.7.01. There is hereby established in the City treasury a special account to be known as the civil defense account. Into this account shall be placed the proceeds of taxes levied for
civil defense, money transferred from other funds, gifts, and other revenues of the Civil Defense Agency. From it shall be made expenditures for the operation and maintenance of the Civil Defense Agency and other expenditures for civil defense. Regular accounting, disbursement, purchasing, budgeting and other financial procedures of the City shall apply to the civil defense fund insofar as practicable; but budgeting requirements and other financial procedures shall not apply to expenditures from the fund in any case when their application will prevent compliance with terms and conditions of a Federal or State grant of money or property for civil defense purposes.

SECTION 3.8 FALLOUT SHELTER IN PUBLIC STRUCTURES.

Sec. 3.8.01. It is the policy of the City that fallout shelters be incorporated in all public buildings owned by the City to the fullest extent practicable in order to provide protection against radiation in the event of nuclear attack.

Sec. 3.8.02. The City Council shall require that all contracts for the design or construction of such public buildings, including additions to or alterations of existing structures, incorporate fallout protection for at least the normal anticipated daily population of the building. The fallout shelter protection provided for shall meet or exceed the minimum space and fallout protection criteria recommended by the Defense Civil Preparedness Agency, unless exempted from such shelter requirement as provided in Sec. 3.8.03.

Sec. 3.8.03. The Council may exempt buildings or structures from the requirements of this section where it finds that such incorporation of fallout shelter will create an additional cost in the construction of such structure in excess of 8% of the estimated cost thereof without shelter so incorporated, or if it finds that other factors make unnecessary or impracticable the incorporation of fallout shelter in such structures.

SECTION 3.9 CONFORMITY AND COOPERATION WITH FEDERAL AND STATE AUTHORITY.

Sec. 3.9.01. Every officer and agency of the City shall cooperate with Federal and State authorities and with authorized agencies engaged in civil defense and emergency measures to the fullest possible extent consistent with the performance of their other duties. The provisions of this ordinance and of all regulations made thereunder shall be subject to all applicable and controlling provisions of Federal and State laws and of regulations and orders issued thereunder and shall be deemed to be suspended and inoperative so far as there is any conflict therewith.

Sec. 3.9.02. The City Council may appoint any qualified person holding a position in any agency created under Federal or State authority for civil defense purposes as a special police officer of the City, with such police powers and duties within the City incident to the functions of this position, not exceeding those of a regular police officer of the City, as may be prescribed in the appointment. Every such police officer shall be subject to the supervision and control of the Chief of Police and such other police officers of the City as the Chief may designate.
SECTION 3.10 PARTICIPATION IN LABOR DISPUTE OR POLITICS.

Sec. 3.10.01. The Civil Defense Agency shall not participate in any form of political activity nor shall it be employed directly or indirectly for political purposes nor shall it be employed in a legitimate labor dispute.

SECTION 3.11 PENALTY.

Sec. 3.11.01. Any person who violates any provision of this ordinance or of any regulation adopted thereunder relating to acts, omissions, or conduct other than official acts of City officers or employees, is guilty of a misdemeanor and upon conviction may be punished in accordance with this Code.
CHAPTER 4 – MUNICIPAL AND PUBLIC UTILITIES RULES AND REGULATIONS, RATES, CHARGES AND COLLECTIONS

SECTION 4.1 DEFINITIONS AND GENERAL PROVISIONS.

Sec. 4.1.01. Definitions. The following terms, as used in this Chapter, shall have the meanings stated:

“Utility” shall refer to all utility services, whether the same be public City-owned facilities or furnished by public utility companies.

“Municipal Utility” shall refer to any City-owned utility system, including, but not by way of limitation, water, sewerage and electric.

“Consumer” and “Customer” shall refer to any user of a utility.

“Service” shall refer to providing a particular utility to a customer or consumer.

“Licensed plumber” shall refer to a plumber licensed by the City.

Sec. 4.1.02. Fixing Rates and Charges for Municipal Utilities. All rates and charges for municipal utilities, including, but not by way of limitation, rates for service, shutoff procedure, connection and meter reading fees, removal of any unlawful device, disconnection fees, meter deposits, reconnection fees including penalties for non-payment if any, shall be fixed, determined and amended by the Council and adopted by resolution. Such resolution, containing the effective date thereof, shall be kept on file and open to inspection in the office of the City Clerk and shall be uniformly enforced.

Sec. 4.1.03. Contractual Contents. Provisions of this chapter relating to municipal utilities shall constitute portions of the contract between the City and all consumers of municipal utility services, and every such customer shall be deemed to assent to the same.

SECTION 4.2 RULES AND REGULATIONS RELATED TO MUNICIPAL UTILITIES.

Sec. 4.2.01. Billing, Payment and Past Due Bills. All municipal utilities shall be billed monthly and a utilities statement or statements shall be mailed to each consumer each month. All utilities charges shall be past due and considered delinquent if they are unpaid at the close of business on the 10th day following such billing, provided, that if the 10th day shall fall on a Saturday, Sunday or legal holiday, the time shall be extended to the close of business on the next succeeding day on which business is normally transacted. A penalty of ten percent (10%) shall be added to and become part of all past due utility bills.

Sec. 4.2.02. Delinquent Utility Bills. Charges for utility service shall be due on the monthly due date as specified by the City and shall be delinquent ten days thereafter. The City shall endeavor to collect delinquent accounts promptly. In any case, where satisfactory arrangements for payment have not been made, the Utilities Department may discontinue service to the delinquent customer by shutting off the water at the stop box and/or electricity at the meter connection box. When utilities to any premises have been disconnected, service shall not be restored to the same consumer except upon payment of all delinquent bills and a reconnection fee. The City Clerk shall prepare an assessment roll on delinquent accounts as
of September 1 of each year providing for assessment for the delinquent amounts against the respective properties served; provided, however, that this assessment procedure shall not be applicable in situations in which the consumer listed on the City records is only a tenant (lessee) and not the owner of the property. The assessment roll shall be delivered to the Council for adoption on or before October 1 of each year for certification to the County Auditor for collection along with taxes the following year. When the assessment is certified to the County Auditor for collection, the amount is no longer considered delinquent.

Sec. 4.2.03. Application, Connection and Sale of Service. Application for municipal utility services shall be made upon forms supplied by the City, and strictly in accordance therewith. All accounts shall be carried in the name of the consumer. The owner shall be liable for utilities supplied to his/her property only if he/she is the consumer listed on the City records, and any charges unpaid shall then be a lien upon the property. No connection shall be made until consent has been received from the City to make the same. All municipal utilities shall be sold and delivered to consumers under the then applicable rate applied to the amount of such utilities taken as metered or ascertained in connection with such rates.

Sec. 4.2.04. Discontinuance of Service. All municipal utilities may be shut off or discontinued whenever it is found that:

Subd. a. The owner of the premises served, or any person working on any connection with the municipal utility systems, has violated any requirement of the City Code relative thereto, or any connection therewith, or

Subd. b. Any charge for a municipal utility service, or any other financial obligation imposed on the present owner of the premises served, is unpaid after due notice thereof, or

Subd. c. There is fraud or misrepresentation by the owner in connection with any application for service or delivery or charges therefor.

Sec. 4.2.05. Ownership of Municipal Utilities. Ownership of all municipal utilities, plants, lines, mains, extensions and appurtenances thereto, shall be and remain in the City and no person shall own any part or portion thereof; provided, however, that private facilities and appurtenances constructed on private property are not intended to be included in municipal ownership.

Sec. 4.2.06. Right of Entry. The City has the right to enter in and upon private property, including buildings and dwelling houses, in or upon which is installed a municipal utility, or connection therewith, at all times reasonable under the circumstances, for the purpose of reading utility meters, for the purpose of inspection and repair of meters or a utility system, or any part thereof, and for the purpose of connecting and disconnecting service.

Sec. 4.2.07. Accuracy. All water and electric utilities service shall be supplied through a meter, which shall accurately measure the amount thereof supplied to any consumer. The consumer shall provide for a metering area that is properly located, safe and readily
accessible at all times for the installation of such meters. Meters shall be tested for accuracy by the City upon the request of any consumer who believes his/her meter to be inaccurate. If, upon test, it appears that such meter overruns to the extent of three percent (3%) or more, the City shall pay the cost of such tests and shall make a refund for overcharges collected since the last known date of accuracy but for not longer than six months, on the basis of the extent of the inaccuracy found to exist at the time of the tests. If, upon test, it appears that such meter is slow to the extent of three percent (3%) or more, the consumer shall pay for undercharges since the last known date of accuracy but for not longer than six months on the basis of the extent of the inaccuracy found to exist at the time of the test. If, when any meter is tested upon the demand of a consumer, it is found to be accurate or slow or less than three percent (3%) fast, the consumer may be billed the reasonable cost of such testing. Any error in reading or computation of a utility account may be corrected for a period not to exceed one year prior to discovery of the error.

Sec. 4.2.08. Unlawful Acts.

Subd. a. It is unlawful for any person to willfully or carelessly break, injure, mar, deface, disturb, or in any way interfere with any building, attachments, machinery, apparatus, equipment, fixture or appurtenance of any municipal utility or municipal utility system, or commit any act tending to obstruct or impair the use of any municipal utility.

Subd. b. It is unlawful for any person to make any connection with, opening into, use, or alter in any way any municipal utility system without first having applied for and received written permission to do so from the City.

Subd. c. It is unlawful for any person to turn on or connect a utility when the same has been turned off or disconnected by the City for non-payment of a bill, or for any other reason, without first having obtained a permit to do so from the City.

Subd. d. It is unlawful for any person to “jumper” or by any means or device fully or partially circumvent a municipal utility meter, or to knowingly use or consume unmetered utilities or use the services of any utility system, the use of which the proper billing authorities have no knowledge.

Sec. 4.2.09. Municipal Utility Service Outside the City. Premises located outside the established service area boundaries of the City shall not be connected to or served by any municipal utility, except such premises as are publicly owned or presently served. Persons needing municipal utility service whose property is located outside the established service area boundaries of the City must initiate and complete annexation proceedings in advance prior to being provided with such service or services.

Sec. 4.2.10. Water Meters. All water meters shall be received from the City and installed in accordance with City policy as well as provisions of the City Code. Any meter damage by reason of abuse, neglect or freezing shall be billed to the owner of the premises
on which it occurs. This section shall apply to any meter required or installed under the provisions of the City Code.

SECTION 4.3 SEWER USE, REGULATIONS, AND A SEWER SERVICE CHARGE SYSTEM.

Sec. 4.3.01. Sewer Use Regulations.

Subd. a. Rules.

1. In the event of conflicting provisions in the text of this subsection and/or subsections, the more restrictive provision shall apply. The City Administrator shall determine which is more “restrictive” and appeals from such determination shall be made in the manner provided herein.

2. Words used in the present tense shall include the past and future tense; the singular includes the plural and the plural includes the singular. The word “shall” is mandatory, and the word “may” is permissive.

Subd. b. Definitions. For the purpose of this subsection, certain terms, words and phrases are hereby defined as follows:

1. **BOD.** Biochemical Oxygen Demand shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20ºC expressed in milligrams per liter. Laboratory procedures shall be in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater.

2. **Building Drain.** That part of the lowest horizontal piping of a drainage system that receives the discharge from waste and other drainage pipes or pumping chambers inside the walls of the building and conveys it to the building sewer, which begins at least one foot outside the building line.

3. **Building Sewer.** That part of the drainage system that extends from the building drain to the point of connection to either a public sewer, a septic tank, pumping chamber or an individual sewage treatment system, for the purpose of conveying wastewater.

4. **City.** The area within the corporate boundaries of the City of Staples. The term “City” when used herein may also be used to refer to the City’s authorized representative.

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

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

7. **Garbage.** Solid waste resulting from the domestic and commercial preparation, cooking, and dispensing of food and from the handling, storage, or sale of meat, fish, fowl, fruit, or vegetable and condemned food.
8. **Individual Sewage Treatment System.** A sewage treatment system connecting to a single dwelling or other establishment, consisting of: soil treatment unit, septic tank, and any associated pumping and piping systems.

9. **Industrial Wastes.** The solid, liquid, or gaseous waste resulting from industrial or manufacturing processes, trade or business, or from the development, recovery, or processing of natural resources.

10. **Infiltration/Inflow.** The total quantity of water from both infiltration and inflow. Infiltration is water entering a sanitary sewer from the ground through such means as defective pipes, pipe joints, connections, building drains and manhole walls. Inflow is surface water other than sewage entering a sanitary sewer from sources such as roof leaders, basement and foundation drains and sumps, yard and area drains, manhole covers, street inlets and catch basins and cross connections from storm sewers.

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

12. **MPCA.** Minnesota Pollution Control Agency.

13. **NPDES Permit.** National Pollutant Discharge Elimination System Permit means the system for issuing, conditioning and denying permits for the discharge of pollutants from point sources into the navigable waters, the contiguous zone, and the oceans by the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act of 1972, Sections 402 and 405.

14. **Natural Outlet.** Any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

15. **Non-Contact Cooling Water.** Water discharged from uses such as air conditioning, cooling, or refrigeration, where the only pollutant added is heat.

16. **Normal Domestic Strength Waste.** Wastewater that is primarily produced by residential users with concentrations not greater than 340 mg/l BOD, 400 mg/l Total Suspended Solids.

17. **Operation and Maintenance.** Activities required to provide for the dependable and economical functioning of the treatment system, throughout the useful life of the treatment works, and at the level of performance for which the treatment works were constructed. Operation and maintenance includes replacement.

18. **Other Wastes.** Garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, oil tar, chemical, offal, and other substances except sewage or industrial waste.

19. **Person.** Any individual, firm, company, association, society, corporation, municipal corporation, governmental unit, or group.

20. **pH.** The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

21. **Public Sewer.** Any sewer owned or operated by a unit or agency of government.
22. **Public Sewage Treatment System.** Any sewage treatment and collection system owned or operated by a unit or agency of government.

23. **Replacement.** The obtaining and installing of equipment, accessories or appurtenances that are necessary during the useful life of the wastewater treatment facilities to maintain the capacity and performance for which such facilities were designed and constructed. The term operation and maintenance includes replacement.

24. **Sanitary Sewer.** A sewer that carries sewage and to which storm, surface and groundwater are not intentionally discharged.

25. **Sanitary Waste.** The liquid and water-carried wastes discharged from sanitary plumbing facilities.

26. **Sewage or Wastewater.** The water-carried waste products from residences, commercial buildings, public buildings, institutions, industrial establishments or other buildings including the excrement or other discharge from the bodies of human beings or animals, together with such ground, surface and storm waters as may be present.

27. **Sewer.** A pipe or conduit for carrying sewage, industrial wastes or other waste liquids.

28. **Sewer Authority.** The governmental entity and department thereof that has monitoring, inspection, permitting and enforcement authority over sanitary improvements including public drain fields and associated collection systems.

29. **Slug.** Any discharge of water, wastewater or industrial waste that, in concentration of any given constituent, or in quantity of flow, exceeds for any period of duration longer than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour concentration or flow during normal operation.

30. **Storm Sewer.** A sewer that carries storm waters, surface runoff, ground water, sub-surface water, street wash water, drainage and unpolluted water from any source.

31. **Suspended Solids (TSS).** Solids that either float on the surface of or are in suspension in water, sewage, or other liquids, and that are removable by laboratory filtering in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater.

32. **Toxic Pollutant.** The concentration of any pollutant or combination of pollutants that upon exposure to or assimilation into any organism will cause adverse affects as defined in standards issued pursuant to Section 307(a) of the Clean Water Act of 1977.

33. **Unpolluted Water.** Clean water uncontaminated by industrial wastes, other wastes, or any substance that renders such water unclean or noxious or impure so as to be actually or potentially harmful or detrimental, or injurious to public health, safety or welfare; to domestic, commercial, industrial or recreational uses; or to livestock, wild animals, birds, fish or other aquatic life.
34. **Wastewater Facility.** The structures, equipment or processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.

**Subd. c. Use of Public Sewers.**

1. **General Requirements.**

   A. **Unlawful Surface Discharge.** It shall be unlawful to discharge to any natural outlet within the City or any area under the jurisdiction of the City any sewage or other pollutant waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance and the City’s NPDES Permit.

   B. **Unlawful Connection to Public Sewers.** It shall be unlawful for any person to connect a building sewer to any public sewer without first obtaining a permit from the City.

   C. **Lawful Connections to Public Sewers.** New connections will be allowed, with City Permit, according to the following conditions:

      i. Where an existing individual sewage treatment system is failing and where the property in question has frontage on the public sewer, a new connection may be permitted if capacity is available in the public wastewater facility.

      ii. New connections to the public sewers will be permitted for new construction if capacity is available in all components of the public wastewater facility.

      iii. The fee for new connections shall be established by the City from time to time.

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

   D. **Building Sewers and Connections.**

      i. Applications for permits shall be made by the owner or authorized agent and the party employed to do the work, and shall state the location, name of owner, street number of the building to be connected, and how occupied. No person shall extend any private building drain beyond the limits of the building or property for which the service connection permit has been given.

      ii. There shall be five (5) classes of building sewer permits including: 1) residential, 2) commercial, 3) industrial, 4) institutional, and 5) governmental. In either case, the application shall be supplemented by any plans, specifications, or any other information considered pertinent in the judgment of the City. An industry, as a condition of permit
authorization, must provide information describing its wastewater constituents, characteristics, and type of activity.

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

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

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

vi. The size, slopes, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling of the trench shall all conform to the requirements of the State of Minnesota Building and Plumbing Code or other applicable rules and regulations of the City. In the absence of code provisions or in the amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply.

vii. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. The property owner shall provide and maintain such lifting mechanism as required at no expense to the City.

viii. No person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or indirectly to the wastewater facility.

E. Unlawful Discharge to Public Sewers. No person shall discharge or cause to be discharged directly or indirectly any waste that, by volume or strength or nature, may harm the wastewater treatment facility or cause obstruction to the free flow in sewers or endanger life or cause a nuisance.

i. No person shall discharge or cause to be discharged directly or indirectly any storm water, groundwater, roof runoff, subsurface drainage, waste
from on-site disposal systems, unpolluted cooling or processing water to any sanitary sewer except as permitted by the City.

ii. Storm water and all other unpolluted water shall be discharged to a storm sewer, if available, or to the ground surface or other natural outlet approved by the City and other regulatory agencies. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or natural outlet on approval and the issuance of a discharge permit by the MPCA.

iii. No person shall discharge or cause to be discharged directly or indirectly to any treatment system:

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

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

3. Any wastewater having a pH of less than 5.0 or greater than 10.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater disposal system.

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

5. Noxious or malodorous liquids, gases, or substances that either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance or repairs.
6. Water or wastes containing substances that are not amenable to
treatment or reduction by the sewage treatment processes employed.

iv. No person shall discharge or cause to be discharged directly or indirectly
the following described substances to any public sewers unless, in the
opinion of the City, such discharge will not harm the wastewater facilities,
nor cause obstruction to free flows in sewers, nor otherwise endanger life,
limb, or public property, nor constitute a nuisance. In forming its opinion
as to the acceptability of the wastes, the City may give consideration to
such factors as the materials or construction of the sewers, nature of the
sewage treatment process, capacity of the sewage treatment facilities, the
City’s NPDES permit, and other pertinent factors. City may make such
determination either on a general basis or as a discharge from individual
users or specific discharges, and may prohibit certain discharges from
individual users because of unusual concentrations or combinations that
may occur.

The substances prohibited are:

1. Any liquid or vapor having a temperature in excess of one hundred
   fifty (150) degrees F. \{Sixty-five (65) degrees C\}.

2. Any water or waste containing fats, wax, grease, or oils, whether
   emulsified or not, in excess of one hundred (100) milligrams per liter or
   containing substances that may solidify or become viscous at
   temperatures between thirty-two (32) and one hundred fifty (150)
   degrees F. \{Zero (0) and sixty-five (65) degrees C\}.

3. Any garbage that has not been ground or comminuted to such degree
   that all particles will be carried freely in suspension under flows
   normally prevailing in the public sewers, with no particles greater than
   one-half (1/2) inch in any dimension.

4. Any water or wastes containing strong acid, iron pickling wastes, or
   concentrated plating solutions, whether neutralized or not.

5. Any water or wastes containing phenols or other taste or odor
   producing substances that constitute a nuisance or hazard to the
   structures, equipment, or personnel of the sewage works, or that
   interfere with the treatment required to meet the requirements of the
   State or Federal government, or any other public agency with proper
   authority to regulate the discharge from the sewage treatment plant.

6. Any radioactive wastes or isotopes of such half-life or concentration
   that they are not in compliance with regulations issued by the
   appropriate authority having control over their use or may cause
damage or hazards to the treatment works or personnel operating it.
7. Unusual concentrations of suspended solids, such as, but not limited to, Fuller’s earth, lime slurries, and lime residues, or of dissolved solids, such as, but not limited to, sodium chloride or sodium sulfate.

8. Unusual volume of flow or concentration of waste constituting a slug.

v. No person shall increase the use of process water or in any manner attempt to dilute a discharge as a partial or complete substitute for adequate pretreatment to avoid unlawful discharge as described in this Article 401.05 or to achieve compliance with limitations contained in the National Categorical Pretreatment “Standards” or any State Requirements.

F. Pretreatment, Control and Refusal of Extraordinary Wastes. If any water or wastes are discharged, or are proposed to be discharged directly or indirectly to the public sewers, which water or wastes do not meet the standards set out in or promulgated under this Subsection, or which in the judgment of the City may have a deleterious effect upon the treatment facilities, processes, equipment, and soil, vegetation and ground water, or which otherwise create a hazard to life, or constitute a public nuisance, the City may take all or any of the following steps:

i. Refuse to accept the discharges.

ii. Require control over the quantities and rates of discharge.

iii. Require pretreatment to an acceptable condition for the discharge to the public sewers, pursuant to Section 307(b) of the Act and all addenda thereof.

iv. Require payment to cover the added cost of handling or treating the wastes.

G. The design and installation of plant or equipment for pretreatment or equalization of flows shall be subject to the review and approval of the City, and subject to the requirements of 40 CFR 403, entitled “Pretreatment Standards,” and the Minnesota Pollution Control Agency.

i. Grease, oil, and mud interceptors shall be provided when they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in Subdivision 401.05 (4) b of this Subsection or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the City and shall be located as to be readily and easily accessible for cleaning and inspection.

ii. Where preliminary treatment, flow equalization, or interceptors are required for any water or waste, they shall be effectively operated and maintained continuously in satisfactory and effective condition by the
owner at his/her expense, and shall be available for inspection by the City at all reasonable times.

iii. When required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such structure and equipment, when required, shall be constructed at the owner’s expense in accordance with plans approved by the City, and shall be maintained by the owner so as to be safe and accessible at all times.

iv. All measurements, tests, and analyses of the characteristics of water and waste to which reference is made in this Subsection shall be determined in accordance with 40 CFR 136 “Guidelines Establishing Test Procedures for the Analysis of Pollutants;” the latest edition of Standard Methods for the Examination of Water and Wastewater, and shall be determined at the control structure provided, or upon suitable samples taken at said control structure. In the event that no special structure has been required, the control structure shall be considered to be the nearest downstream manhole in the public sewer from the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effluent constituents and their effect upon the treatment works and to determine the existence of hazards to life, health and property. Sampling methods location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the City.

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

vi. New connections to the sanitary sewer system shall be prohibited unless sufficient flow capacity is available in all downstream facilities.

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

Subd. d. Use of Individual Sewage Treatment Systems.

1. General Requirements.

   A. Mandatory Sewage Treatment. Where a public sewage treatment system is not available under the provisions of Section 401.03, the building sewer shall be connected to an individual sewage treatment system complying with the rules and regulations of 6MCAR 4.8040 (WPC-40), entitled, “Individual Sewage Treatment System Standards,” or the requirements of St. Louis County, or other regulatory agencies, whichever is more restrictive.

   B. New Installation. No new private treatment systems or extensions shall be constructed within the City without first obtaining a permit for said system or expansion from the City.

   C. Unlawful Discharge to Individual Treatment System. It shall be unlawful to discharge such wastes as are prohibited by Section 401.05 of this Subsection to an individual sewage treatment system.

   D. The owner of privately owned individual treatment systems shall be responsible for all operation and maintenance, and the costs associated, of such systems.

Subd. e. Miscellaneous.

1. Metered Water Not Discharged. If a portion of the water furnished to any premises is not directly or indirectly discharged into the sewerage system, the quantity of such water shall be deducted in computing the sewerage service charge or rental, provided a separate meter be installed and operated to register the quantity so not discharged into the sewerage system.

2. Unmetered Water Supply. If any premises discharge normal sewage or industrial waste into the sanitary sewerage system, either directly or indirectly, obtain part or all of the water used thereon from sources other than the City, and the water so obtained is not measured by a meter of equivalent specifications to the meters used by the City, then in such case, the City shall permit the discharge of normal sewage or industrial waste into its sanitary sewerage system only when the owner of such premises or some other interested party shall at his/her own expense install and maintain for the purpose of metering such water supply a water meter of equivalent specifications to those provided by the City in connection with the City water system. Each water meter shall be installed to measure all water received on such premises, and the above charges and rates shall be applied to the quantity of water received as measured by such meter. If, because of the nature of the source of the water supply, the City deems it impracticable to thus meter the
water on any premises, the Council may by resolution establish a flat charge per month in accordance with the estimated use of water on such premises.

3. **Inspection and Approval.** The licensed plumber who was issued the building sewer permit shall notify the Street Commissioner or his/her representative when the building sewer is ready for inspection. The connection shall be made under the supervision of the Street Commissioner or his/her authorized representative. No backfill shall be placed until the work has been inspected and approved.

4. **Separate Sewers.** A separate and independent sewer shall be provided for every building connected to the sewer system, except that the City Council may waive this requirement where it finds that a separate sewer for a building is impractical.

**Subd. f. Administration.**

1. **Enforcement.** The City Administrator shall be responsible for administration and enforcement of this Subsection.

2. **Adjustments and Appeals.**

   A. The City Council shall hear and decide appeals and review any order, decision or determination made by the City Administrator regarding the enforcement of this Subsection.

   B. The appropriate board or agency of the City shall hear and act upon all rate adjustment and variance requests where provisions of this Subsection are specifically variable.

   C. Any appeal of any administrative decision or determination may be filed by any person, department, bureau, town, city, county or State.

3. **Inspections as required to determine compliance with this Subsection shall be performed by the City’s authorized agent under the following circumstances:**

   A. Duly authorized employees of the City shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this Subsection. Those employees shall have no authority to inquire into processes including metallurgical, chemical, oil refining, ceramic, paper, or other industries except as is necessary to determine the kind and source of the discharge to the public sewer.

   B. The owner or occupant of a property shall be responsible to provide access at reasonable times, to the authorized agent of the City, for the purpose of performing inspections required under this Subsection.

   C. While performing the necessary work on private property as referred to in Subdivision e. (3) (A), the authorized agents of the City shall observe all safety rules applicable to the premises.
Subd. g. Enforcement.

1. Violations and Penalties.

A. It is hereby declared unlawful for any person, firm, or corporation to violate any term or provision of this Subsection. Violation thereof shall be a misdemeanor. Each day that a violation is allowed to continue shall constitute a separate offense.

B. In the event of a violation or threatened violation of this ordinance, the City, in addition to other remedies, may request appropriate actions or proceedings to prevent, restrain, correct, or abate such violations of threatened violations, and it shall be the duty of the City Attorney to initiate such action.

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

D. No authorized person shall maliciously, willfully or negligently break, damage, uncover, deface or tamper with any structure, appurtenance or equipment that is part of the municipal wastewater works. Any person violating this provision shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment of no more than 90 days or by a fine of no more than $500.00.

E. Any person, firm or corporation violating any of the provisions of this ordinance shall be guilty of a petty misdemeanor, and upon conviction, shall be punished by a fine of no more than $100.00. Each day of each violation shall be deemed a separate offense.

F. Any person violating any of the provisions of this ordinance shall become liable to the City for any expense, loss or damage occasioned by City by reason of such violation.

G. Repeated discharge of prohibited waste into the sanitary sewer shall be sufficient cause to disconnect any and all water and sanitary sewer services to the premises by the City. Such action to disconnect shall occur only after notice as described in this Subd. g.

Subd. h. Effectuation.

1. Separability.

A. It is hereby declared to be the intent that the provisions of this Subsection are separable in accordance with the following:

   i. If any court of competent jurisdiction shall adjudge any provision of this Subsection to be invalid, such judgment shall not affect any other provisions of this Subsection not specifically included in said judgment.
ii. If any court of competent jurisdiction shall adjudge invalid the application of any portion of this Subsection to a particular property, building or other structure, such judgment shall not affect the application of said provision to any other property, building or structure not specifically included in said judgment.

Sec. 4.3.02 Sewer Use Charges.

Subd. a. Rules.

1. In the event of conflicting provisions in the text of this Subsection, and/or subsections, the more restrictive provision shall apply. The City Administrator shall determine which is more “restrictive” and appeals from such determination shall be made in the manner provided herein.

2. Words used in the present tense shall include the past and future tense; the singular includes the plural and the plural includes the singular. The word “shall” is mandatory, and the word “may” is permissive.

Subd. b. Definitions. Unless the context specifically indicates otherwise, the meaning of the terms used in this Subsection shall be as hereafter designated:

1. Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20ºC, expressed in milligrams per liter.

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

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

4. Extra Strength Waste. Wastewater having a BOD and/or TSS greater than domestic waste as defined herein and not otherwise classified as an incompatible waste.

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

6. Industrial Wastewater. The liquid processing wastes from an industrial manufacturing process, trade or business.

7. Infiltration/Inflow. The total quantity of water from both infiltration and inflow. Infiltration is water entering a sanitary sewer from the ground through such means as defective pipes, pipe joints, connections, building drains and manhole walls. Inflow is surface water other than sewage entering a sanitary sewer from sources such as roof leaders, basement and foundation drains and sumps, yard and area
drains, manhole covers, street inlets and catchbasins and cross-connections from storm sewers.

8. **Normal Domestic Strength Wastewater.** Wastewater that is primarily produced by residential users, with BOD concentrations not greater than 340 mg/l and suspended solids concentrations not greater than 400 mg/l.

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

10. **Operation and Maintenance Costs.** Expenditures for operation and maintenance, including replacement.

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

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


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

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

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

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

18. **Suspended Solids (SS) or Total Suspended Solids (TSS).** The total suspended matter that either floats on the surface or is in suspension in water, wastewater or other liquids, and is removable by laboratory filtering as prescribed in “Standard Methods for the Examination of Water and Wastewater,” latest edition, and referred to as non-filterable residue.
19. **User Charge.** A charge levied on users of a treatment works for the user’s proportionate share of the cost of operation and maintenance, including replacement.

20. **Users.** Those residential, commercial, governmental, institutional and industrial establishments that are connected to the public sewer collection system.

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

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

23. **Commercial User.** Any place of business that discharges sanitary waste as distinct from industrial wastewater.

24. **Governmental User.** Users that are units, agencies or instrumentalities of federal, State or local government discharging Normal Domestic Strength wastewater.

25. **Industrial Users or “Industries”** are:

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

   - Division (i) Agriculture, Forestry and Fishing
   - Division (ii) Mining
   - Division (iii) Manufacturing
   - Division (iv) Transportation, Communications, Electric, Gas and Sanitary Sewers
   - Division (v) Services

   For the purpose of this definition, domestic waste shall be considered to have the following characteristics:
BOD\textsubscript{5}     Less than 340 mg/l  
Suspended Solids     Less than 400 mg/l

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

26. **Institutional User.** Users other than commercial, governmental, industrial or residential users, discharging primarily Normal Domestic Strength wastewater (e.g. nonprofit organizations).

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

**Subd. c. Establishment of a Sewer Charge System.**

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

2. Each user shall pay its proportionate share of flow and load-related operation, maintenance and replacement costs of the treatment works based on the user’s proportionate contribution to the total wastewater loading from all users.

3. Each user shall pay its share of the operation, maintenance and replacement costs of the treatment works related to administration and to infiltration/inflow based on the total number of connections of all users.

4. Each user shall pay debt service charges to retire local capital costs as determined by the City Council.

5. Sewer Service rates and charges to users of the wastewater treatment facility shall be determined and fixed in a “Sewer Service Charge System” developed according to the provisions of the ordinance. The Sewer Service Charge System shall be adopted by resolution upon enactment of this ordinance, and any subsequent changes in Sewer Service rates and charges will be adopted by Council resolution and shall become effective as determined by Council.

6. Revenue collected for Sewer Service shall be deposited in a separate fund known as “The Sewer Service Fund.” Income from revenues collected will be expended
to offset the cost of operation, maintenance and equipment replacement for the facility and to retire the debt for capital expenditures.

7. Sewer Service Charges and the Sewer Service Fund will be administered in accordance with the provisions of Section 5 of this ordinance.

**Subd d. Determination of Sewer Service Charges.**

1. Users of the City of Staples wastewater treatment works shall be identified as belonging to one of the following user classes:

   A. Residential
   B. Commercial
   C. Industrial
   D. Institutional
   E. Governmental

   The allocation of users to these categories for the purpose of assessing User Charges and Debt Service Charges shall be the responsibility of the City Administrator. Allocation of users to user classes shall be based on the substantive intent of the definitions of these classes contained herein.

2. The user shall pay operation, maintenance and replacement costs in proportion to the user’s proportionate contribution of wastewater flows and loadings to the treatment plant, with the minimum rate for loadings of BOD and of TSS being the rate established for concentrations of 340 mg/l BOD and 400 mg/l TSS (i.e. Normal Domestic Strength Wastewater). In addition, the user shall pay operation, maintenance and replacement costs related to administration and to infiltration/inflow based on the total number of connections of all users.

3. **Unit Costs for Treatment of Flow, BOD and TSS:**

   Unit costs for treatment of Flow, BOD and TSS shall be determined and fixed annually in the Sewer Service Charge System according to the following procedure:

   A. Determine the Annual OM&R budget.
   B. Allocate total Annual OM&R costs to Flow, BOD and TSS proportionately; according to the costs of collection and of the specific treatment processes required to affect or reduce Flow, BOD and TSS.
   C. Multiply the Annual OM&R costs allocated to Flow by one minus the infiltration/inflow fraction.
   D. Divide the OM&R costs attributable to Flow (as adjusted by C. above), BOD and TSS respectively, by the total annual billable volume and loadings of Flow, BOD and TSS, to arrive at unit costs.

   For purposes of determining user charges, the following definitions of unit costs shall apply:
UF = Unit cost for treatment of Flow in $/CCF.
UBOD = Unit cost for treatment of BOD in $/lb.
UTSS = Unit cost for treatment of TSS in $/lb.

Unit costs for 1989 are provided in Table 5 of the Sewer Service Charge System developed with the assistance of Toltz, King, Duvall, Anderson and Associates, Inc. Subsequent calculations of unit costs shall be according to the substantive intent of this SSCS.

The infiltration/inflow fraction is the ratio of infiltration/inflow to infiltration/inflow plus billable total flow in gallons. The rate for 1989 is provided in Section D. of the Sewer Service Charge System.

4. **User Charges for Normal Domestic Strength Users.**

A. **Calculating Billable Flows and Loadings.**

The billable amount of flow will be calculated from the volume of the monthly metered water usage.

The infiltration/inflow will be calculated from the total volume of treated wastewater less the billable amount of flow.

**Determination of Loadings from Metered Water Usage.**

The billable amounts of BOD and TSS will be calculated from the volume of metered water usage as determined above, where the billable quantities will be those attributable to a wastewater concentration of 340 mg/l BOD and 400 mg/l TSS (i.e. “Normal Domestic Strength Wastewater”).

B. **Calculating User Charges.**

User charges consist of a charge for sanitary sewer system infiltration/inflow and a charge for operation, maintenance and replacement of the wastewater treatment works.

i. **Infiltration/Inflow Charge**

The user charge for I/I flow is apportioned on a per connection basis.

\[
IC = \frac{(Total\ Annual\ OM&R\ Costs\ Attributable\ to\ Flow)\ (I/I\ Fraction)}{Total\ Number\ of\ Connections}
\]

Where: \( IC = Annual\ Infiltration/Inflow\ Charge\ per\ Connection \)

\( I/I\ Fraction = \frac{Ratio\ of\ Infiltration/Inflow\ to\ Infiltration/Inflow\ plus\ billable\ total\ flow\ in\ gallons}{Total\ Number\ of\ Connections} \)
ii. Operation, Maintenance and Replacement Charge

\[ UC_{(NDS)} = (U_F \times F) + (U_{BOD} \times K_{BOD} \times F) = (U_{TSS} \times K_{TSS} \times F) \]

Where:  
- \( UC_{(NDS)} \) = User Charge for treatment of Normal Domestic Strength Wastewater  
- \( U_F \) = Unit Cost for treatment of Flow in $/CCF.  
- \( F \) = Billable Flow in CCF.  
- \( U_{BOD} \) = Unit Cost for treatment of BOD in $/lb.  
- \( K_{BOD} \) = Constant used to calculate the quantity of BOD in lbs./CCF of NDS waste (340 mg/l BOD) as follows:  
  \[ K_{BOD} = 0.00624 \times 340 \text{ mg/l} \] (BOD concentration of NDS waste)  
- \( U_{TSS} \) = Unit Cost for treatment of TSS in $/lb.  
- \( K_{TSS} \) = Constant used to calculate the quantity of TSS in lbs./CCF of NDS waste (400 mg/l TSS) as follows:  
  \[ K_{TSS} = 0.00624 \times 400 \text{ mg/l} \] (TSS concentration of NDS waste)

iii. Total User Charge

\[ UC = IC + UC_{(NDS)} \]

Where:  
- \( UC \) = Total User Charge for infiltration/inflow and OM&R.

5. User Charges for Users Contributing Wastes Greater Than Normal Domestic Strength:

A. Calculating Billable Flows and Loadings.

The billable amount of flow will be calculated from the volume of monthly metered water usage, or at the discretion of the City, from the measurement of effluent flow at user’s point of discharge. Measurements shall be according to a regular program prescribed by the City.
The billable amounts of BOD and TSS will be calculated by the measurement of these wastes according to a program prescribed by the City in keeping with the latest edition of Standard Methods for the Examination of Water and Wastewater and in accordance with Sec. 4.3.01, “Sewer Use Regulations.”

B. Calculating User Charges.

User charges consist of a charge for sanitary sewer system infiltration/inflow and a charge for operation, maintenance and replacement of the wastewater treatment works.

i. Infiltration/Inflow Charge

The user charge for I/I flow is apportioned on a per connection basis.

\[
IC = \frac{(Total\ Annual\ OM&R\ Costs\ Attributable\ to\ Flow) \times (I/I\ Fraction)}{Total\ Number\ of\ Connections}
\]

Where:  

\[
IC = \text{Annual Infiltration/Inflow Charge per Connection}
\]

\[
I/I\ Fraction = \text{Ratio of Infiltration/Inflow to Infiltration/Inflow plus billable total flow in gallons.}
\]

ii. Operation, Maintenance and Replacement Charge

\[
UC(GNDS) = (UF \times F) + (UBOD \times QBOD) + (UTSS \times QTSS)
\]

Where:  

\[
UC(GNDS) = \text{User Charge for treatment of wastewater that is greater than Normal Domestic Strength}
\]

\[
UF = \text{Unit Cost for treatment of Flow in $/CCF.}
\]

\[
F = \text{Billable Flow in CCF.}
\]

\[
UBOD = \text{Unit Cost for treatment of BOD in $/lb.}
\]

\[
QBOD = \text{Quantity of BOD in $/lb.}
\]

\[
UTSS = \text{Unit Cost for treatment of TSS in $/lb.}
\]

\[
QTSS = \text{Quantity of TSS in lbs.}
\]

iii. Total User Charge

\[
UC = IC + UC(GNDS)
\]

Where:  

\[
UC = \text{Total User Charge for infiltration/inflow and OM&R.}
\]
6. The City may, at its discretion require non-residential users to install wastewater flow meters or such additional water meters as may be necessary to determine wastewater volume. The City may require residential connections to install water meters for the purpose of determining wastewater volume. When so required, such meters shall be of a type approved by the City, equipped with remote registering recorders, and located at an accessible site on the owner’s property.

7. Sewer Service Charge for Recovery of Local Construction Costs

Local construction costs for the Wastewater Treatment Facility will be recovered from users in proportion to their contribution of wastewater flow into the Treatment Facility as follows:

Unit costs for debt service of capital expenditures attributable to flow, shall be calculated according to the Sewer Service Charge System as provided in Sec. I.

A. Calculating Debt Service Charges.

For Normal and Greater Than Normal Domestic Strength Users

\[ DC = UDS \times BWV \]

Where:  
\[ DC \] = Debt Service Charge to Normal and Greater Than Normal Strength Users  
\[ UDS \] = Unit Cost for Debt Service of capital expenditures attributable to flow in $/CCF.  
\[ BWV \] = Billable flow in CCF.

8. Determination of Annual Sewer Service Charge.

\[ SSC = UC + DC \]

Where:  
\[ SSC \] = Annual Sewer Service Charge  
\[ UC \] = Annual User Charge  
\[ DC \] = Annual Debt Service Charge

Subd e. Sewer Service Fund.

1. The City of Staples hereby establishes a “Sewer Service Fund” as an income fund to receive all revenues generated by the Sewer Service Charge System, and all other income dedicated to the operation, maintenance, replacement and construction of the wastewater treatment works, including taxes, special charges, fees and assessments intended to retire construction debt.
The City also establishes the following accounts as income and expenditure accounts within the Sewer Service Fund:

A. Operation and Maintenance Account
B. Equipment Replacement Account
C. Debt Retirement Account

2. All revenue generated by the Sewer Service Charge System, and all other income pertinent to the treatment system, including taxes and special assessments dedicated to retire construction debt, shall be held by the Administrator separate and apart from all other funds of the City. Funds received by the Sewer Service Fund shall be transferred to “Operation and Maintenance Account” in accordance with the State and Federal regulations and the provisions of the Subsection.

3. Revenue generated by the Sewer Service Charge System for replacement throughout the design or useful life, whichever is longer, of the wastewater facility shall be held separate and apart in the “Equipment Replacement Account” and dedicated to effecting replacement costs.

4. Revenue generated by the Sewer Service Charge System for operation and maintenance shall be held separate and apart in the “Operation and Maintenance Account.”

Subd. f. Administration.

The Sewer Service Charge System and Sewer Service Fund shall be administered according to the following provisions:

1. The City Administrator shall maintain a proper system of accounts suitable for determining the operation and maintenance, equipment replacement and debt retirement costs of the treatment works, and shall furnish the City Council with a report of such costs annually.

The City Council shall annually determine the revenue being generated for the effective operation, maintenance, replacement and management of the treatment works, and whether sufficient revenue is being generated for debt retirement. The Council will also determine whether the user charges are distributed proportionately to each user in accordance with Subd. c. of this subsection and Section 204(b)(2)(A) of the Federal Water Pollution Control Act, as amended.

The City shall thereafter, reassess, and as necessary revise the Sewer Service Charge System of the user charges to insure the sufficiency of funds to maintain the capacity and performance to which the facilities were constructed, and to retire the construction debt. The user will be notified annually in conjunction with regular billing of changes to the Sewer Service User Charge attributable to operation, maintenance and replacement.
2. In accordance with Federal and State requirements, the City Administrator shall be responsible for maintaining all records necessary to document compliance with the Sewer Service Charge System adopted.

3. Bills for Sewer Service Charges shall be rendered on a monthly basis succeeding the period for which the service was rendered and shall be due 10 days from the date of billing. Any bill not paid in full 10 days after the due date will be considered delinquent. At the time the City shall notify the delinquent owner/occupant in writing regarding the delinquent bill and subsequent penalty. The penalty shall be computed at 10% of the original bill.

4. The owner of the premises shall be liable to pay for the service to such premises, and the service is furnished to the premises by the City only upon the condition that the owner of the premises is liable therefore to the City.

5. Any additional costs caused by discharges to the treatment works of toxics or other incompatible wastes, including the cost of restoring wastewater treatment services, clean up and restoration of the receiving waters and environs, and sludge disposal, shall be borne by the discharger(s) of said wastes, at no expense to the City.

Subd. g. Penalties.

1. Each and every Sewer Service Charge levied by and pursuant to this ordinance is hereby made a lien upon the lot or premises served, and all such charges which are on October of each year past due and delinquent, shall be certified to the County Auditor as taxes or assessments on the real estate. Nothing in this Subsection shall be held construed as in any way stopping or interfering with the right of the City to levy as taxes or assessments against any premises affected, any delinquent or past due Sewer Service Charges.

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

3. In additional to all penalties and costs attributable and chargeable to recording notices of the lien or filing a civil action, the owner or user of the real estate being serviced by the treatment works shall be liable for interest upon all unpaid balances at a rate determined by Council.

Subd. h. Severability and Validity.

1. If any subdivision of this Subsection shall be held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Subsection, which shall continue in full force and effect.

2. The Sewer Service Charge System shall take precedence over any terms or conditions of agreements or contracts that are inconsistent with the requirements of Section 204(b)(1)(A) of the Act and Federal Regulation 40 CFR (Code of
Federal Regulations) 35.2140 of the Environmental Protection Agency’s grant regulations.

SECTION 4.4 RULES AND REGULATIONS RELATING TO WATER SERVICE.

Sec. 4.4.01. Deficiency of Water and Shutting Off Water. The City is not liable for any deficiency or failure in the supply of water to customers whether occasioned by shutting the water off for the purpose of making repairs or connections or by any other cause whatever. In case of fire, or alarm of fire, water may be shut off to insure a supply for fire fighting. In making repairs or construction of new works, water may be shut off at any time and kept off as long as may be necessary.

Sec. 4.4.02. Repairs of Leaks. It is the responsibility of the owner to maintain the service pipe from the main into the house or other building. In case of failure upon the part of any owner to repair any leak occurring in the service pipe within twenty-four hours after written notice has been given the owner or occupant of the premises, the water may be shut off and will not be turned on until a reconnection charge has been paid and the water service has been repaired. When the waste of water is great or when damage is likely to result from the leak, the water will be turned off or disconnected if the repair is not proceeded with immediately. In the event of non-compliance with this section necessitating disconnection by the City, the owner of the premises shall be billed therefore, and the amount thereof shall become a part of the utility charges.

Sec. 4.4.03. Abandoned Services Penalties. All service installations connected to the water system that have been abandoned or, for any reason, have become useless for further service shall be disconnected at the main. The owner of the premises served by this service shall pay the cost of the excavation. The City shall inspect and approve the actual disconnection. When new buildings are erected on the site of old ones, and it is desired to increase the old water service, a new permit shall be taken out. It is unlawful for any person to cause or allow any service pipe to be hammered or squeezed together at the ends to stop the flow of water, or to save expense in properly removing such pipe from the main. Also, such improper disposition thereof shall be corrected by the City, and the cost incurred shall be borne by the licensed plumber causing or allowing such work to be performed.

Sec. 4.4.04. Services Pipes. Every service pipe shall be copper and must be laid in such manner as to prevent rupture by settlement. The service pipe shall be placed not less than seven feet below the surface in all cases so arranged as to prevent rupture and stoppage by freezing. Frozen service pipes between the main and the building shall be the responsibility of the owner. Service pipes must extend from the curb stops to the inside of the building; or if not taken into a building, then to the hydrant or other fixture that they are intended to supply. Valves, the same size as the service pipe, shall be placed close to the inside wall of the building, on both sides of the meter and well-protected from freezing. Joints on copper tubing shall be AWWA approved and kept to a minimum. Not more than one joint shall be used for a service up to seventy feet in length. All joints shall be left uncovered until water pressure is applied and inspected. Minimum size connection with the water mains shall be
three-quarters of an inch in diameter. No person except an authorized City employee or a licensed plumber shall tap any distribution main or pipe of the water supply system.

**Sec. 4.4.05. Private Water Supplies.** No water pipe of the City water system shall be connected with any pump, well, pipe, tank or any device that is connected with any other source of water supply, and when such are found, the City shall notify the owner or occupant to disconnect the same, and if not immediately done, the City water shall be turned off. Before any new connections to the City system are permitted, the City shall ascertain that no cross-connections will exist when the new connection is made. When a building is connected to “City Water,” the private water supply may be used only for such purposes as the City may allow.

**Sec. 4.4.06. Restricted Hours for Sprinkling.** Whenever the City shall determine that a shortage of water threatens the City, it may limit the times and hours during which water may be used from the City water system for lawn and garden sprinkling, irrigation, car washing, air conditioning and other uses, or either or any of them. It is unlawful for any water consumer to cause or permit water to be used in violation of such determination after public announcement thereof has been made through the news media specifically indicating the restrictions thereof.

**Sec. 4.4.07. Private Fire Hose Connections.** Owners of structures with self-contained fire protection systems may apply for and obtain permission to connect the street mains with hydrants, large pipes, and hose couplings, for use in case of fire only, at their own installation expense and at such rates as the Council may adopt by resolution as herein provided.

**Sec. 4.4.08. Opening Hydrants.** It is unlawful for any person, other than members of the Fire Department or other person duly authorized by the City, in pursuance of lawful purpose, to open any fire hydrant or attempt to draw water from the same or in any manner interfere therewith. It is also unlawful for any person so authorized to deliver or suffer to be delivered to any other person any hydrant key or wrench, except for the purposes strictly pertaining to their lawful use.

**Sec. 4.4.09. Unmetered Service.** Unmetered service may be provided for construction, flooding skating rinks and any other purpose. Such service shall be at a duly adopted rate. Where it is difficult or impossible to accurately measure the amount of water taken, unmetered service may be provided and the unmetered rate applied; provided, however, that by acceptance thereof, the consumer agrees to have the City estimate the water used. In so estimating, the City considers the use to which the water is put and the length of time of unmetered service.

**Sec. 4.4.10. Code Requirement.** All piping, connections and appurtenances installed to the consumer shall be performed strictly in accordance with the Minnesota Plumbing Code, 1976. Failure to install or maintain the same in accordance therewith, or failure to have or permit required inspections shall, upon discovery by the City, be an additional ground for termination of water service to any consumer.
Sec. 4.4.11. Separate Water Services. A separate and independent water service line shall be provided for every house or building connected with the water system, except that the City Council may waive this requirement where it finds that a separate service for a building is impractical. Whenever two or more parties are supplied from one pipe connecting with a service main, each building or part of building separately supplied shall have a separate stop box and a separate meter.

Sec. 4.4.12. Inspection and Approval. The licensed plumber who was issued the building water permit shall notify the Utilities Superintendent or his/her representative when the water service line is ready for inspection. The tap shall be made by the licensed plumber under the supervision of the Utilities Superintendent or his/her authorized representative. All joints shall be left uncovered until water pressure is applied and inspected.

SECTION 4.5 RULES AND REGULATIONS RELATING TO ELECTRIC SERVICE.

Sec. 4.5.01. Code Requirement. All wiring, connections and appurtenances installed to the consumer shall be performed strictly in accordance with the National Electrical Code, 1978, as amended. Failure to install or maintain the same in accordance therewith, or failure to have or permit required inspections shall, upon discovery by the City, be an additional ground for termination of electrical service to any consumer.

Sec. 4.5.02. Point of Delivery. The customer shall be responsible for the necessary wiring to the point of delivery, which is the utility’s dead-end bracket located at the customer’s service entrance for overhead services and the point of secondary voltage at the utility’s distribution main for underground service. The utility will make the actual connections at the point of delivery.

Sec. 4.5.03. Services. In new or changed service installations, the decision as to whether it shall be placed underground, overhead, or the financial responsibility of the City or the consumer, shall be guided by the written policy of the City.

Sec. 4.5.04. Electrical Installations.

Subd. a. In new or changed service installations, the customer shall make application at the Utility Office.

Subd. b. The customer shall have one service entrance per dwelling or building. The customer shall provide and install all service entrance equipment, including temporary service pole that shall be strong enough in the judgment of the utility department, to support personnel while installing the service connections. The utility shall provide the meter connection box. The customer shall mount the meter connection box on the outside of the dwelling or building that would be readily accessible and acceptable by the utility department.
**Subd. c.** The customer shall make the arrangements for the required State inspection. The utility supplier’s copy of the certificate-affidavit of inspection shall be filed with the utility before electrical connections are made.

**Subd. d.** In order to prevent overloading distribution circuits and equipment, the customer shall contact the Utilities Office prior to installing equipment, such as electric welders and electric motors over 3 H.P., which would require additional demand of electricity.

**Sec. 4.5.05. Deficiency of Electricity and Shutting Off Electricity.** The City is not liable for any deficiency or failure in the supply of the electricity to customers whether occasioned by shutting the electricity off for the purpose of making repairs or connections or by any other cause whatever. In making repairs or construction of new services, the electricity may be shut off at any time and kept off as long as may be necessary.

**SECTION 4.6 LICENSING OF PLUMBERS.** See Section 10.8 of this Code.
CHAPTER 5 - BUILDING CODE REQUIREMENTS

SECTION 5.1  SIDEWALKS.

Sec. 5.1.01. Obstructions. No person, company, corporation or association shall encumber or obstruct any sidewalk within the City of Staples, and it shall be unlawful to place building materials, excavation materials or other debris on any sidewalk.

Sec. 5.1.02. It shall be the duty of every owner or occupant of buildings or grounds adjacent to sidewalks to:

Subd. a. Remove all snow and ice. If said snow and ice is not removed within 48 hours after a snowfall, the City shall be empowered to remove the snow and ice and assess the cost to the property owner, with the cost to be assessed and become a lien against the property adjacent to the sidewalk, with such assessment to become payable with the real estate taxes due and payable in the following calendar year.

Subd. b. Remove all debris and rubbish. If said debris and rubbish is not removed within 48 hours after due notice thereof, the City shall be empowered to remove the debris and rubbish and assess the cost thereof to the property owner, with the cost to be assessed and become a lien against the property adjacent to the sidewalk, with such assessment to become payable with the real estate taxes due and payable in the following calendar year.

Subd. c. Maintain and keep in repair said sidewalk. Said sidewalk shall be constructed in such a manner and with such material as to conform to the City regulations on said sidewalk. Said regulations shall be in accordance with whatever resolutions are passed by the City of Staples and on file with the City regarding specifications of sidewalk construction.

Subd. d. All sidewalks shall be constructed or repaired in accordance with the resolutions passed by the City of Staples, and if, after due notice, a property owner refuses or fails to construct or repair such sidewalk in accordance with the resolution passed by the City of Staples, the City shall be empowered to build and construct or repair such sidewalk, and assess the cost thereof to the property owner, with the cost to be assessed and become a lien against the property adjacent to the sidewalk, with such assessment to become payable with the real estate taxes due and payable in the following calendar year.

Sec. 5.1.03. For purposes of this section, not less than 6 feet nor more than 10 feet in width in front of all lots in the City shall be considered for a sidewalk.

Sec. 5.1.04. Penalty. Any person who violates any provision of this section or of any regulation adopted thereunder relating to acts, omissions, or conduct other than official acts of City officers or employees, is guilty of a misdemeanor, and upon conviction may be punished in accordance with this Code.
SECTION 5.2 MINNESOTA PLUMBING CODE. The Minnesota State Plumbing Code, 1976 edition, as amended from time to time, is hereby adopted by reference in its entirety. Every provision contained in said Plumbing Code is hereby adopted and made a part of this Code as if fully set forth herein. The City of Staples shall be empowered to inspect all plumbing work within the City, and notify the plumbing contractor, or land owner, of any violations of the Plumbing Code, and require corrections to be performed. If the plumbing contractor or land owner fails or refuses to comply with the notice, the City of Staples shall be empowered to perform whatever services are necessary to correct the violations and to charge the cost thereof to the plumbing contractor, or in the City’s discretion, to the land owner, with the cost to be assessed and become a lien against the property, with such assessment to become payable with the real estate taxes due and payable in the following calendar year. Any person who covers a plumbing installation before it is inspected shall be guilty of a misdemeanor and punished in accordance with this Code.

SECTION 5.3 NATIONAL ELECTRICAL CODE. The National Electrical Code, 1978 edition, as prepared by the National Fire Protective Association, is hereby adopted by reference in its entirety. Every provision contained in said National Electrical Code is hereby adopted and made a part of this Code as if fully set forth herein. The City of Staples shall be empowered to inspect all electrical work within the City, and notify the electrical contractor, or land owner, of any violations of the National Electrical Code, and require corrections to be performed. If the electrical contractor or land owner fails or refuses to comply with the notice, the City of Staples shall be empowered to perform whatever services are necessary to correct the violations and to charge the cost thereof to the electrical contractor, or, in the City’s discretion, to the land owner, with the cost to be assessed and become a lien against the property, with such assessment to become payable with the real estate taxes due and payable in the following calendar year. Any person who covers electrical installation before it is inspected shall be guilty of a misdemeanor and punished in accordance with this Code.

SECTION 5.4 NATIONAL FIRE PREVENTION CODE. The National Fire Prevention Code, 1966 edition, as prepared by Building Officials Conference of America, Inc., as amended from time to time, is hereby adopted by reference in its entirety. Every provision contained in said National Fire Prevention Code is hereby adopted and made a part of this Code as if fully set forth herein. The City of Staples shall be empowered to enforce the provisions of this section, and any person violating the provisions of this section is guilty of a misdemeanor and upon conviction may be punished in accordance with this Code.

SECTION 5.5 NATIONAL BUILDING CODE AND UNIFORM HOUSING CODE. The National Building Code, 1967 edition, as prepared by the American Insurance Associates, and the Uniform Housing Code, as last amended, and as may be amended from time to time, are hereby adopted by reference in their entirety. Every provision contained in said National Building Code and Uniform Housing Code is hereby adopted and made a part of this Code as if fully set forth herein. The City of Staples shall be empowered to enforce the provisions of these codes, and any person violating the provisions of this section is guilty of a misdemeanor and upon conviction may be punished in accordance with this Code.
SECTION 5.6  STAPLES ZONING ORDINANCE

Sec. 5.6.01. Intent And Purpose.

This Ordinance is adopted for the purpose of:

1. Protecting the public health, safety, comfort, convenience and general welfare.
2. Dividing the area in the City into zones and districts regulating therein the location, construction, reconstruction, alteration and use of structures and land.
3. Promoting orderly development of the residential, business, industrial, recreational and public areas.
4. Providing for the compatibility of different land uses and the most appropriate use of land throughout the City.
5. Conserving the natural and scenic beauty and attractiveness of the City.
6. Minimizing environmental pollution.

Sec. 5.6.02. Rules and Definitions.

Subd. a. Rules.

The language set forth in the text of this Ordinance shall be interpreted in accordance with the following rules of construction:

1. The singular number includes the plural, and the plural the singular.
2. The present tense includes the past and future tenses, and the future the present.
3. The word "building" includes structure and dwelling.
4. The word "person" includes individual, corporation, co-partnership, and association.
5. The word "shall" is mandatory, and the word "may" is permissive.
6. All measured distances expressed in feet shall be to the nearest foot, unless otherwise specified.
7. In the event of conflicting provisions, the more restrictive provisions shall apply.

Subd. b. Definitions.

The following words and terms, whenever they occur in this Ordinance, are defined as follows:

1. Accessory Use, Building or Structure - A use or structure, or portion of a structure, subordinate to and serving the principal use or structure on the same lot.
2. Agricultural Building or Structure - Any building or structure existing or erected which is used principally for agricultural purposes, with exception of dwelling units.
3. Agricultural Use - The use of the land for the growing and/or production of field crops, livestock, and livestock products for the purpose of income or research, including but not limited to, the following:

   A. Field crops, such as: barley, soybeans, corn, hay, oats, potatoes, rye, sorghum and sunflowers.
   B. Truck garden and horticultural crops, such as: berries, fruits and vegetables.
   C. Forestry crops, such as: lumber, fuel wood and Christmas trees.
   D. Livestock, such as: dairy and beef cattle, goats, horses, sheep, hogs, poultry, game birds, and other animals including dogs, ponies, deer, rabbits and mink.
   E. Livestock products, such as: milk, butter, cheese, eggs, meat, fur and honey from animals raised on site.

4. Alley - Any dedicated public way affording a secondary means of vehicular access to abutting property, and not intended for general traffic circulation.

5. Animal Unit - A unit of measure in the production of animal manures. Used as a standard amount of manure produced on a regular basis by a slaughter steer or heifer, as defined by State law.

6. Apartment - A room or suite of rooms with cooking facilities available which is occupied as a residence by a single family, or a group of individuals living together as a single family unit. This includes any unit in buildings with more than two dwelling units.

7. Auto Service Stations - A place where the following services may be carried out: the sale of engine fuels, general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision service, such as body, frame or fender straightening and repair; painting and undercoating of automobiles.

8. Basement - A portion of a building located partly underground but having half or more of its floor to ceiling height below the average grade of the adjoining ground.

9. Boarding House (Rooming or Lodging House) - A building other than a motel or hotel where, for compensation and by prearrangement for definite periods, meals or lodgings are provided for six or more persons.

10. Board - The Board of Adjustment and Appeals.

11. Building - Any structure, either temporary, or permanent, having a roof, and used or built for the shelter or enclosure of persons, animals, chattels or property of any kind. This shall include tents, awnings or vehicles situated on private property and used for purposes of a building.

12. Building Height - The vertical distance measured from the established grade to the highest point of the roof. Where a building is located on sloping
terrain, the height may be measured from the average ground level of the grade at the building wall.

13. Building Line - A line parallel to the street right of way line at any story level of a building and representing the minimum distance which all or any part of the building is set back from said right of way line.

14. Building, Main or Principal - A building in which is conducted the principal use of the lot on which it is situated.

15. Business - Any occupation, employment or enterprise wherein merchandise is exhibited or sold, or where services are offered for compensation.

16. Church - A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

17. City - The City of Staples.

18. Comprehensive Plan - A compilation of goals, policy statements, standards, programs and maps for guiding the physical, social and economic development of the City and its environs and includes any unit or part of such plan separately adopted and any amendment to such plan or parts thereof.

19. Conditional Use - A use classified as conditional generally may be appropriate or desirable in a specified zone, but requires special approval because if not carefully located or designed it may create special problems such as excessive height or bulk or traffic congestion.

20. Condominium – A form of individual ownership within a multi-family building with joint responsibility for maintenance and repairs of the common property. In a condominium, each apartment or townhouse is owned outright by its occupant, and each occupant also owns a share of the land and other common property.

21. Cooperative – A multi-unit development operated for and owned by its occupants. Individual occupants do not own their specific housing unit outright as in a condominium, but they own shares in the total enterprise.

22. Curb Level – The grade elevation established by the City Council of the curb in front of the center of the building. Where no curb level has been established, the engineering staff shall determine a curb level or its equivalent for the purpose of this Ordinance.

23. Drive-In - A business establishment so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles to serve patrons while in the motor vehicle, rather than within a building or structure.

24. Drive-In Restaurant - Any restaurant designed to permit or facilitate the serving of meals, sandwiches, ice cream, beverages or other food, served directly to, or permitted to be consumed by patrons in automobiles or other
vehicles parked on the premises, or permitted to be consumed by patrons elsewhere on the site, outside the main building.

25. Dwelling, Attached – One which is joined to another dwelling or building at one (1) or more sides by a party wall or walls.

26. Dwelling, Detached - One which is entirely surrounded by open space on the same lot with no common party walls.

27. Dwelling Unit - A residential building or portion thereof intended for occupancy by a single family but not including hotels, motels, boarding or rooming houses or tourist homes. There are three (3) principal types:

A. Single-Family, Detached - A free-standing residence structure designed for or occupied by one (1) family only.

B. Single-Family, Attached - A residential building containing two (2) or more dwelling units with one common wall.

1. Two Family Dwelling or Duplex - A residence designed for or occupied by two (2) families only, with separate housekeeping and cooking facilities for each.

2. Townhouse - A residential building containing two (2) or more dwelling units with at least one (1) common wall, each unit so oriented as to have all exits open to the outside.

3. Quadplex - A residential building containing four (4) dwelling units with one common wall, each unit so oriented as to have all exits open to the outside.

C. Multiple-Family - A residence designed for or occupied by three (3) or more families, either wholly (attached) or partially a part of a large structure (detached), with separate housekeeping and cooking facilities for each.

28. Earth Sheltered Building - A building constructed so that fifty percent (50%) or more of the completed structure is covered with earth. Earth covering is measured from the lowest level of livable space in residential units and of usable space in nonresidential buildings. An earth sheltered building is a complete structure that does not serve just as a foundation or substructure for above-ground construction. A partially completed building shall not be considered earth sheltered.

29. Easement - A grant by a property owner for the use of a strip of land for the purpose of constructing and maintaining walkways; roadways; utilities, including but not limited to sanitary sewers, water mains, electric lines, telephone lines, storm sewer or storm drainage-ways and gas lines.

30. Efficiency Unit - A dwelling unit with one primary room which doubles as a living room, kitchen and bedroom.
31. Essential Services - Overhead or underground electrical gas, steam or water transmission or distribution systems and structure or collection, communication, supply or disposal systems and structures used by public utilities or governmental departments or commissions or as are required for the protection of the public health safety or general welfare, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes and accessories in connection therewith but not including buildings.

32. Excavation - Any breaking of ground, except common household gardening and ground care.

33. Exterior Storage (Includes Open Storage) - The storage of goods, materials, equipment, manufactured products and similar items not fully enclosed by a building.

34. Family - One or more persons related by blood, marriage or adoption. Five (5) or fewer persons not related by blood, marriage or adoption will be considered a family regardless of ownership of the unit amongst the five (5) or fewer persons.

35. Farm - A tract of land which is principally used for agricultural activities such as the production of cash crops, livestock or poultry farming. Such farms may include agricultural dwelling and accessory buildings and structures necessary to the operation of the farm.

36. Feedlot, Agricultural - An uncovered enclosure, or a covered enclosure for the purpose of feeding animals or poultry (maximum of 250 animal units), an accessory use incidental to a farming operation.

37. Feedlot, Commercial - An uncovered enclosure, or a covered enclosure with a maximum of 500 animal units at any one time for the purpose of feeding of animals or poultry, not an accessory use incidental to a farming operation.

38. Floor Area - The sum of the horizontal areas of each story of the building measured from the exterior faces of the exterior walls. The floor area measurement is exclusive of areas of basements, unfinished attics, attached garages, breezeways and enclosed unenclosed porches.

39. Frontage - That boundary of a lot which abuts an existing or dedicated public street.

40. Garage, Private - A separate building or separate portion of the principal building which is intended for and used to store the private passenger vehicles of the family or families resident upon the premises.

41. Garage, Public - Any building or premises, except those used as a private or storage garage, used for equipping, repairing, hiring, selling or storing motor driven vehicles.

42. Garage, Storage - Any building or premises used for housing motor driven vehicles and at which automobile fuels are not sold or motor vehicles are not equipped, repaired, hired or sold.
43. Governing Body - City Council of Staples.

44. Grade - The average of the finished level at the center of the exterior walls of the building. For an earth sheltered building, grade means the average of the finished level at the center of the lot. For a building with earth berms but less than fifty percent (50%) earth covering, grade means the average of the finished level at the center of the building at the beginning of the earth berm.

45. Home Occupation - Any gainful occupation or profession engaged in by the occupant of a dwelling at or from the dwelling when carried on in a dwelling unit. Such uses include professional offices, minor and small appliance repair services, photo or art studios, dressmaking, barber shops, beauty shops, tourist homes, day care centers, or similar uses.

46. Horticulture - Horticulture uses and structures designed for the storage of products and machinery pertaining and necessary thereto.

47. Hotel - A building which provides a common entrance, lobby, halls and stairway and in which twenty (20) or more people can be, for compensation, lodged with or without meals.

48. Junk Yards/Salvage Yards - An open area including buildings where waste, used or secondhand materials are bought and sold, exchanged, stored, baled, packed, disassembled or handled, including, but not limited to, scrap iron and other metals, paper, rags, rubber tires, and bottles.

49. Kennel, Commercial - Any lot or premises on which more than three (3) dogs, cats or other household pets are either permanently or temporarily boarded, bred, or sold.

50. Loading Space - An off-street space on the same lot with a building or group of buildings, for temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

51. Lodging Room - A room rented as sleeping and living quarters, but without cooking facilities. In a suite of rooms without cooking facilities, each room which provides sleeping accommodation shall be counted as one (1) lodging room.

52. Lot - A parcel or portion of land in a subdivision or plat of land, separated from other parcels or portions by description as on a subdivision or record of survey map, for the purpose of sale or lease or separate use thereof.

53. Lot of Record - Any lot which is one (1) unit of a plat heretofore duly approved and filed, or one unit of an auditor's Subdivision or a Registered Land Survey that has been recorded in the office of the County Recorder for Todd or Wadena County, Minnesota, prior to the effective date of this Ordinance.

54. Lot Area - The area of a lot in a horizontal plane bounded by the lot lines.

55. Lot, Corner - A lot situated at the junction of, and abutting on two or more intersecting streets, or a lot at the point of deflection in alignment of a
continuous street, the interior angle of which does not exceed one hundred thirty-five (135) degrees.

56. Lot Coverage - The area of the zoning lot occupied by the principal buildings and accessory buildings. Earth berms are not to be included in calculating lot coverage. Only the above grade portions of an earth sheltered building should be included in lot coverage calculations.

57. Lot Depth - The mean horizontal distance between the front lot line and the rear lot line of a lot.

58. Lot Line - The property line bordering a lot except that where any portion of a lot extends into the public right of way shall be the lot line for purposes of this Ordinance.

59. Lot Line, Front - That boundary of a lot which abuts an existing or dedicated public street, and in the case of a corner lot it shall be the shortest dimension on a public street. If the dimensions of a corner lot are equal, the front line shall be designated by the owner and filed with the County Recorder.

60. Lot Line, Rear - That boundary of a lot which is opposite the front lot line. If the rear line is less than ten (10) feet in length, or if the lot forms a point at the rear, the rear lot line shall be a line ten (10) feet in length within the lot, parallel to, and at the maximum distance from the front lot line.

61. Lot Line, Side - Any boundary of a lot which is not a front lot line or a rear lot line.

62. Lot, Substandard - A lot or parcel of land for which a deed has been recorded in the office of the County Recorder upon or prior to the effective date of this Ordinance which does not meet the minimum lot area, structure setbacks or other dimensional standards of this Ordinance.

63. Lot Width - The maximum horizontal distance between the side lot lines of a lot measured within the first thirty (30) feet of the lot depth.

64. Manufactured/Mobile Home - A structure, transportable in one or more sections, which in the traveling mode is eight (8) body feet or more in width or forty (40) body feet or more in length or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and including the plumbing, heating, air conditioning, and electrical systems contained therein, except that the term includes any structure which meets all the requirements, and with respect to which the manufacturer voluntarily files a certificate required by the secretary and complies with the standards established under this chapter.

65. Manufactured/Mobile Home Park - Any site, lot field or tract of land under single ownership, designated, maintained or intended for the placement of two (2) or more occupied homes. It shall include any buildings, structures,
vehicle, or enclosure intended for use as part of the equipment of such mobile/manufactured home park.

66. Metes and Bounds - A method of property description by means of their direction and distance from an easily identifiable point.

67. Mining - The extraction of sand, gravel, rock, soil or other material from the land in the amount of one thousand (1,000) cubic yards or more and the removal thereof from the site. The only exclusion from this definition shall be removal of materials associated with construction of a building, provided such removal is an approved item in the building permit.

68. Modular Home - A non-mobile housing unit that is basically fabricated at a central factory and transported to a building site where final installations are made, permanently affixing the module to the site.

69. Motel (Tourist Court) - A building or group of detached semi-detached, or attached buildings containing guest rooms or dwellings, with garage or parking space conveniently located to each unit, and which is designed, used or intended to be used primarily for the accommodation of automobile transients.

70. Motor Home or Recreation Vehicle - Any vehicle mounted on wheels and for which a license would be required if used on highways, roads or streets, and so constructed and designed as to permit occupancy thereof for dwelling or sleeping purposes and used for recreational purposes.

71. Nursery, Landscape - A business growing and selling trees, flowering and decorative plants and shrubs and which may be conducted within a building or without, for the purpose of landscape construction.

72. Nursing Home - A building with facilities for the care of children, the aged, infirm, or place of rest for those suffering from bodily disorder. Said nursing home shall be licensed by the State Board of Health as provided for in Minn. Stat. §144.50.

73. Open Sales Lot (Exterior Storage) - Any land used or occupied for the purpose of buying and selling any goods, materials, or merchandise and for the storing of same under the open sky prior to sale.

74. Parking Space - A suitably surfaced and permanently maintained area on the privately owned property either within or outside of a building of sufficient size to store one standard automobile.

75. Pedestrian Way - A public or private right of way across or within a block, to be used by pedestrians.

76. Planning Commission - The Planning Commission of Staples.

77. Planned Unit Development - A residential development whereby buildings are grouped or clustered in and around common open space areas in accordance with a prearranged site plan and where the common open space is
owned by the homeowners and usually maintained by a homeowner's association.

78. Principal Structure or Use - One which determines the predominant use as contrasted to accessory use or structure.

79. Property Line - The legal boundaries of a parcel of property which may also coincide with a right of way line or a road, cartway, and the like.

80. Property Owner - Any person, association or corporation having a freehold estate interest, leasehold interest extending for a term or having renewal options for a term in excess of one (1) year, a dominant easement interest, or an option to purchase any of same, but not including owners of interests held for security purposes only.

81. Protective Covenant - A contract entered into between private parties which constitutes a restriction of the use of a particular parcel of property.

82. Public Land - Land owned or operated by municipal, school district, county, State or other governmental units.

83. Public Utility - Any person, firm or corporation, municipal department, board or commission duly authorized to furnish and furnishing under Federal, State or Municipal regulations to the public: gas, steam, electricity, sewage disposal, communications, telegraph, transportation or water.

84. Recreation, Commercial - Includes all uses such as bowling alleys, roller and skating rinks, driving ranges, and movie theaters that are privately owned and operated with the intention of earning a profit by providing entertainment for the public.

85. Recreation, Public - Includes all uses such as tennis courts, ball fields, picnic areas, and the like that are commonly provided for the public at parks, playgrounds, community centers, and other sites owned and operated by a unit of government for the purpose of providing recreation.

86. Registered Land Survey - A survey map of registered land designed to simplify a complicated metes and bounds description, designating the same into a tract or tracts of Registered Land Survey Number. (See Minn. Stat. § 508.47.)

87. Setback - The minimum distance between a structure or sanitary facility and a road, highway or property line.

88. Solar Structure - A structure designed to utilize solar energy as an alternate for, or supplement to, a conventional energy system.

89. Story - That portion of a building included between the surface of any floor and the surface of the floor next above, including below ground portions of earth sheltered buildings.

90. Story, Half - A story under a gable, hip, or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two (2) feet above the floor of such story.
91. Street - A public right of way which affords primary means of access to abutting property, and shall also include avenue, highway, road or way.

92. Street, Collector - A street which serves or is designed to serve as a traffic way for a neighborhood or as a feeder to a major street.

93. Street, Major or Thoroughfare - A street which serves, or is designed to serve, heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

94. Street, Local - A street intended to serve primarily as an access to abutting properties.

95. Street Pavement - The wearing or exposed surface of the roadway used by vehicular traffic.

96. Street Width - The width of the right of way, measured at right angles to the centerline of the street.

97. Structure - Anything constructed, the uses of which requires more or less permanent location on the ground, or attached to something having a permanent location on the ground.

98. Structural Alteration - Any change in the supporting members of a building such as bearing walls, columns, beams, or girders, or any change in the roof or in and exterior walls.

99. Subdivision - The division or redivision of a lot, tract, or parcel of land into two (2) or more lots either by plat or by metes and bounds description.

100. Townhouse - A single family building attached by party walls with other single family buildings, and oriented so that all exits open to the outside.

101. Use - The purpose or activity for which the land or building thereon is designated, arranged, or intended, or for which it is occupied, utilized, or maintained.

102. Use, Accessory - A use subordinate to and serving the principal use of structure on the same lot and customarily incidental thereto.

103. Use, Non-Conforming - Use of land, buildings, or structures existing at the time of adoption of this Ordinance which does not comply with all the regulations of this Ordinance or any amendments hereto governing the zoning district in which use is located.

104. Use, Permitted - A public or private use which of itself conforms with the purposes, objectives, requirements, regulations, and performance standards of a particular district.

105. Use, Principal - The main use of land or buildings as distinguished from subordinate or accessory use. A "principal use" may be either permitted or conditional.
106. **Use, Temporary** - A use or building permitted by the Board of Adjustments and Appeals to exist during periods of construction of the main building or use, or for special events.

107. **Variance** - A modification or variation of the provisions of this Ordinance where it is determined that by reason of special and unusual circumstances relating to a specific lot, that strict application of the Ordinance would cause undue hardship.

108. **Yard** - A required open space on a lot which is unoccupied and unobstructed by a structure from its lowest level to the sky except as permitted in this Ordinance. The yard extends along the lot line at right angles to such lot line to a depth or width specified in the setback regulations for the zoning district in which such lot is located. For earth sheltered buildings and buildings covered with earth berms, the line of the building is measured from the exterior surface of the building regardless of whether it is above or below grade.

109. **Yard, Rear** - That portion of the yard on the same lot with the principal building located between the rear line of the building and the rear lot line and extending for the full width of the lot.

110. **Yard, Side** - The yard extending along the side lot line between the front yard and rear yard to a depth or width required by setback regulations for the zoning district in which such lot is located.

111. **Yard, Front** - A yard extending along the full width of the front lot line between side lot lines and extending from the abutting street right of way line to depth required in the setback regulations for the zoning district in which such lot is located.

112. **Zoning Administrator** - The duly appointed person charged with enforcement of this Ordinance.

113. **Zoning Amendment** - A change authorized by the City either in the allowed use within a district or in the boundaries of a district.

114. **Zoning District** - An area or areas within the limits of the City for which the regulations and requirements governing use are uniform as defined by this Ordinance.

**Sec. 5.6.03 General Provisions**

**Subd. a. Application of This Ordinance.**

1. This Ordinance shall be applicable to all lands and waters within the corporate limits of Staples, Minnesota.

2. In their interpretation and application, the provisions of this Ordinance shall be held to the minimum requirements for the promotion of the public health, safety and welfare.
3. No part of the yard or open space required for a given building shall be included as part of the yard or other space required for another building, and no lot shall be used for more than one principal building.

4. Chimneys, cooling towers, elevator bulkheads, fire towers, monuments, silos, stacks, scenery lofts, tanks, water towers, ornamental towers, spires, wireless or broadcasting towers, masts or aerials and necessary mechanical appurtenances are hereby excepted from the height regulations of this Ordinance and may be erected in accordance with other regulations or ordinance of the City.

5. Where the conditions imposed by any provision of this Ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail (i.e. The Staples Municipal Airport Zoning Ordinance is more restrictive in some areas.).

Subd. b. Separability.

It is hereby declared to be the intention that the several provisions of this Ordinance are separable in accordance with the following:

1. If any court of competent jurisdiction shall judge any provisions of this Ordinance to be invalid, such judgment shall not affect any other provisions of this Ordinance not specifically included in said judgment.

2. If any court of competent jurisdiction shall judge invalid the application of any provision of this Ordinance to a particular property, building, or structure, such judgment shall not affect other property, buildings, or structures.

Subd. c. Existing Lots.

1. A lot or parcel of land in a residential district which was on record as a separate lot or parcel in the Office of the County Recorder or Registrar of Titles, on or before the date of adoption of this Ordinance may be used for single family detached dwelling purposes provided the area and width thereof are within sixty-five percent (65%) of the minimum requirements of this Ordinance, and provided it can be demonstrated that safe and adequate sewage treatment systems can be installed to serve such permanent dwelling.

2. No more than one (1) principal building shall be located on a lot.


Any structure or use existing upon the effective date of the adoption of this Ordinance may be continued subject to the following provisions:

1. A nonconforming use or structure may be replaced, expanded, or enlarged in conformity with the provisions of Sec. 5.6.04. e., Conditional Use Permits.

2. An existing nonconforming use shall not be allowed to be converted to another nonconforming use.
3. A nonconforming use of a structure which has been discontinued for a period of twelve (12) months shall not be re-established and any further use shall be in conformity with the regulations of this Ordinance.

4. A nonconforming structure which is damaged by any cause to the extent of more than fifty percent (50%) of its market value as determined by the current records of the County Assessor, shall not be restored except in conformity with the regulations of this Ordinance.

5. Normal maintenance of a nonconforming use and structure is permitted. Maintenance may include necessary non-structural repairs and incidental alterations which do not include or intensify the nonconforming use.

Sec. 5.6.04 Administration

Subd. a. Enforcing Officer.

The City Council shall appoint a Zoning Administrator. The Zoning Administrator shall enforce this Ordinance and shall perform the following duties:

1. Review and approve building permits for compliance with the Zoning Ordinance, approve other permits, make and maintain records thereof.

2. Determine compliance of land use with the terms of this Ordinance.

3. Maintain permanent and current records of this Ordinance, including but not limited to, maps, amendments, conditional uses, variances, appeals and applications.

4. Review, file and forward all applications for appeals, variances, conditional uses or other matters to the designated official bodies.

5. Institute in the name of the City any appropriate actions for proceedings against a violator as provided for in this Ordinance.

Subd. b. Appeals and the Board of Adjustments and Appeals.

1. There is hereby created a Board of Adjustments and Appeals which shall consist of three (3) members appointed by the City Council as follows: one member of the Zoning and Planning Commission (other than the City Council representative), one citizen at large and one member selected by the Council from its own membership. Two (2) members of the Board constitute a quorum, and all action by the Board requires the affirmative vote of the quorum. The Board shall serve without compensation. Its members shall serve a term of one (1) year beginning on the first day of January and until their successors are appointed. The Board shall elect one of its members as chairman and appoint a secretary who may, but need not, be one of its members. Staff services for the Board shall be furnished by the Council.

2. The Board shall elect a chairperson and vice-chairperson from among its members and shall adopt rules for the transaction of its business. The Board shall provide a public record of its proceedings which shall include the minutes of its meetings, its findings, and action taken on each matter heard by
it, including the final recommendation. The meetings of the Board shall be held at the call of the chairman and at such other times as the Board in its rules of procedure may specify.

3. The Board shall review all questions as they may arise in the administration of this Ordinance, including the interpretation of zoning maps, and it shall hear appeals from and review any order, requirement, decision, or determination made by the administrative officer charged with enforcing this Ordinance. Such appeal may be taken by any person, firm or corporation aggrieved or by any officer, department, board or bureau of the City. The Board shall also have the authority to grant variances to the provisions of the Zoning Ordinance under certain conditions. The conditions for the issuance of a variance are indicated in Sec.5.6.04. f. of this Ordinance.

4. Meetings by the Board shall be held within such times and upon such notice to interested parties as is provided in this Ordinance and in accordance with its adopted rules for the transaction of business. The Board shall, within sixty (60) days make a determination concerning any matter brought before it.

Subd. c. Duties of the Planning Commission in Zoning Administration

The Planning and Zoning Commission shall provide assistance to the City Council and Zoning Administrator in the administration of this Ordinance, and the recommendation of the Commission shall review, hold public hearings, and make recommendations to the City Council on all applications for zoning amendments and conditional use permits using the criteria in Sec. 5.6.04. d. and e..


The City Council may adopt by a majority vote of all members present (except as in Sec. 5.6.04.d. 2. D.), amendments to the Zoning Ordinance and Zoning map in relation both to land uses within a particular district or to the location of the district line. Such amendments shall not be issued indiscriminately, but shall only be used as a means to reflect changes in the goals and policies of the City as reflected in the Comprehensive Plan or changes in conditions in the City.

2. Kinds of Amendments.

A. A change in a district's boundary (rezoning).

B. A change in a district's regulations.

C. A change in any other provision of this Ordinance.

D. A change in classification of land from residential to commercial or industrial requires a two-thirds vote for approval.

3. Initiation of Proceedings.

Proceedings for amending this Ordinance shall be initiated by at least one of the following three methods:

A. By property owners.
B. By recommendation of the Planning and Zoning Commission.

C. By action of the City Council.

4. Required Exhibits for Rezoning or District Regulation Changes Initiated by Property Owners.
   A. An accurate listing showing property owners' names and addresses within the affected zone and within three hundred and fifty (350) feet of the outer boundaries of the property in question.
   B. An accurate boundary survey and preliminary development plan may be required by the Planning Commission.

5. Procedure for Initiating an Amendment Based Upon Application by a Property Owner.

   The procedure for a property owner to initiate a rezoning or district regulation change applying to his property is as follows:
   A. A preliminary building and site development plan. The City Council may also require a boundary survey of the property.
   B. Evidence of ownership or enforceable option on the property.
   C. The Planning and Zoning Commission shall set the date for a public hearing. The Zoning Administrator shall prepare notices of such hearing for publication in the legal newspaper at least once, not less than ten (10) days and not more than thirty (30) days prior to said hearing. A similar notice shall be mailed at least ten (10) days before the day of the hearing to each owner of affected property and property situated wholly or partly within three hundred fifty (350) feet of the property to which the amendment relates. Failure of a property owner to receive such notification shall not invalidate the proceedings, provided a bona fide attempt to comply with these provisions have been made.

   The City Council may waive the mailed notice requirements for a City-wide amendment to the Zoning Ordinance.
   
   D. Prior to the scheduled public hearing, the Zoning Administrator shall prepare the appropriate exhibits for distribution to the Planning and Zoning Commission and to interested parties.
   
   E. The Planning and Zoning Commission shall hold the public hearing, adopt findings based upon the evidence established during the hearing, and recommend and transmit to the City Council, one (1) of three (3) actions - approval, denial or conditional approval.
   
   F. The City Council shall act upon the application after receiving the recommendation of the Planning and Zoning Commission.
   
   G. No application of a property owner for an amendment to the text of the Ordinance or the zoning map shall be reconsidered by the Commission within the one (1) year period following a denial of such request, except...
the Commission may permit a new application if, in the opinion of the Commission, new evidence of a change of circumstances warrant it.

H. Completed application shall be acted upon within sixty (60) days of receipt unless properly extended.

6. Procedure for Initiating an Amendment Based Upon a Recommendation by the Planning and Zoning Commission.

A. The Planning and Zoning Commission shall pass a motion recommending an amendment to the Zoning Ordinance.

B. The Planning and Zoning Commission shall submit the proposed amendment to the City Council for review and comment.

C. The Planning and Zoning Commission shall set the date for a public hearing. The Zoning Administrator shall prepare notices of such hearing for publication in the legal newspaper at least once, not less than ten (10) days and not more than thirty (30) days prior to said hearing. A similar notice shall be mailed at least ten (10) days before the day of the hearing to each owner of affected property and property situated wholly or partly within three hundred fifty (350) feet of the property to which the amendment relates. Failure of a property owner to receive such notification shall not invalidate the proceedings, provided a bona fide attempt to comply with these provisions has been made.

The City Council may waive the mailed notice requirements for a City-wide amendment to the Zoning Commission.

D. Prior to the scheduled public hearing, the Zoning Administrator shall prepare the appropriate exhibits for distribution to the Planning and Zoning Commission and to interested parties.

E. The Planning and Zoning Commission shall hold the public hearing, adopt findings based upon the evidence established during the hearing, and shall make and transmit a recommendation to the City Council within sixty (60) days from the close of the public hearing.

F. The City Council shall adopt findings and shall act upon the application within sixty (60) days after receiving the recommendation of the Planning and Zoning Commission.

7. Procedure for Initiating an Amendment Based Upon a Recommendation by the City Council.

A. The City Council shall pass a resolution of intent to amend the Zoning Ordinance.

B. The City Council shall submit the proposed amendment to the Planning and Zoning Commission for review and comment.

C. The Planning and Zoning Commission shall set the date for a public hearing. The Zoning Administrator shall prepare notices of such hearing for publication in the legal newspaper at least once, not less than ten (10)
days and not more than thirty (30) days prior to said hearing. A similar notice shall be mailed at least ten (10) days before the day of the hearing to each owner of affected property and property situated wholly or partly within three hundred fifty (350) feet of the property to which the amendment relates. Failure of a property owner to receive such notification shall not invalidate the proceedings, provided a bona fide attempt to comply with these provisions has been made.

The City Council may waive the mailed notice requirements for a City-wide amendment to the Zoning Ordinance.

D. Prior to the scheduled public hearing, the Zoning Administrator shall prepare the appropriate exhibits for distribution to the Planning and Zoning Commission and to interested parties.

E. The Planning and Zoning Commission shall hold the public hearing, adopt findings based upon the evidence established during the hearing, and shall make and transmit a recommendation to the City Council within sixty (60) days from the close of the public hearing.

F. The City Council shall adopt findings and shall act upon the application within sixty (60) days after receiving the recommendation of the Commission.

Subd. e. Conditional Use Permits.

1. Criteria for Approval of Conditional Use Permit Applications.

To approve a Conditional Use Permit Application, the City Council of Staples shall consider the advice and recommendations of the Planning and Zoning Commission. Each application shall be reviewed to determine the effect of the proposed use on the Comprehensive Plan and upon the health, safety, and general welfare of occupants of surrounding lands. At a minimum, the City Council shall consider the following, where applicable:

A. The use will not create an excessive burden on existing parks, schools, street and other public facilities which serve or are proposed to serve the area.

B. The use will be sufficiently compatible or separated by distance or screened from adjacent residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.

C. The structure and site shall have an appearance that will not have an adverse effect upon adjacent residential properties.

D. The use is consistent with the purposes of the Zoning Ordinance and the purposes of the Zoning District in which the applicant intends to locate the proposed use.

E. The use is not in conflict with the Comprehensive Plan of the City.

F. The use will not cause traffic hazard or congestion.
G. Adequate facilities, access roads, drainage, and necessary facilities have been or will be provided.

2. Additional Conditions.

In permitting a new conditional use or in the case of an existing conditional use, the City Council may impose, in addition to those standards and requirements expressly specified by this Ordinance, additional conditions which the City Council considers necessary to protect the best interest of the surrounding area or the community as a whole. These conditions may include but are not limited to the following:

A. Increasing the required lot size or yard distance.
B. Limiting the height, size or location of buildings.
C. Controlling the location and number of vehicle access points.
D. Increasing the street width.
E. Increasing the number of required off street parking spaces.
F. Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
G. Designating sites for open space.

The Zoning Administrator shall maintain a record of all Conditional Use Permits issued including information on the use, location, and conditions imposed by the City Council; dates for review of time limits (Sec. 5.6.04. e. 4.), and such other information as may be appropriate.


A. A preliminary building and site development plan. The City Council may also require a boundary survey of the property.
B. Evidence of ownership or enforceable option on the property.
C. Evidence of current real estate taxes paid.

4. Procedure.

The procedure for applying for a Conditional Use Permit is as follows:

A. The property owner or his/her agent shall meet with the Zoning Administrator to explain his situation, learn the procedures and obtain an application form.
B. The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay a filing fee as established by the City Council.
C. The Planning and Zoning Commission shall set a date for a public hearing. The Zoning Administrator shall prepare notices of such hearing for publication in the legal newspaper at least once, not less than ten (10) days and not more than thirty (30) days prior to the scheduled hearing. A
similar notice shall be mailed at least ten (10) days before the day of the hearing to each owner of affected property and property situated wholly or partly within three hundred fifty (350) feet of the property to which the amendment relates. Failure of a property owner to receive such notification shall not invalidate the proceedings, provided a bona fide attempt to comply with these provisions has been made.

D. Prior to the scheduled public hearing, the Zoning Administrator shall prepare the appropriate exhibits for distribution to the Planning and Zoning Commission and to interested parties.

E. The Planning and Zoning Commission shall hold the public hearing, study the application to determine possible adverse effects of the proposed conditional use and determine what additional requirements may be necessary to reduce such adverse effects, adopt findings based upon the evidence established during the hearing and shall recommend one (1) of three (3) actions - approval, denial, or conditional approval.

F. The City Council shall adopt findings and shall take appropriate action on the request for a Conditional Use Permit after receiving the recommendation from the Commission. If it grants the Conditional Use Permit, the City Council may impose conditions it considers necessary to protect the public health, safety, and welfare.

G. Where a Conditional Use Permit has been issued pursuant to the provisions of this Ordinance, such permit shall become null and void without further action by the Planning and Zoning Commission or the City Council unless work on the property by the applicant commences within sixty (60) days of the date of granting such conditional use. A Conditional Use Permit shall be deemed to authorize only one particular use and shall expire if that use shall cease for more than twelve (12) consecutive months.

H. In the event that the applicant violates any of the conditions set forth in this permit, the Conditional Use Permit may be revoked by the City Council.

Subd. f. Variances


A Variance to the provision of the Zoning Ordinance may be granted by the Board of Adjustments and Appeals in those cases where the Ordinance is found to impose undue hardship to a property owner. No use variances may be issued. A Variance may be granted only in the event that the Board finds that the current ordinances cause undue hardship to the land and only after all of the following circumstances have been considered and evaluated as part of the decision.

A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over
which the owners of property since enactment of this Ordinance have had no control.

B. The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.

C. That the special conditions or circumstances do not result from the actions of the applicant.

D. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures or buildings in the same district.

E. That the variance requested is the minimum variance which would alleviate the hardship. Economic conditions alone shall not be considered a hardship.

F. The variance would not be materially detrimental to the purpose of this Ordinance, or to other property in the same zone.

G. The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, substantially diminish or impair property values within the neighborhood.

2. Required Exhibits for Variances.
   A. A preliminary building and site development plan. The Board of Adjustments and Appeals may also require a boundary survey of the property.

   B. Evidence of ownership or enforceable option on the property.

2. Procedure.

   The procedure for obtaining a Variance from the regulations of this Ordinance are as follows:

   A. The property owner or his agent shall meet with the Zoning Administrator to explain his situation, learn the procedures and obtain an application form.

   B. The applicant shall file the completed application form together with the required exhibits with the Zoning Administrator and shall pay a filing fee as established by the City Council resolution.

   C. The Zoning Administrator shall set a date for the Board of Adjustment and Appeals to meet and shall issue mailed notification concerning the meeting no less than ten (10) days prior to the scheduled meeting date to all property owners within two hundred (200) feet of the outer boundaries of the property in question. Failure of a property owner to receive such notification shall not invalidate the proceedings.
D. Prior to the scheduled meeting, the Zoning Administrator shall prepare the appropriate exhibits for distribution to the Board and to interested parties.

E. The Board of Adjustment and Appeals shall study the application and shall determine within sixty (60) days one (1) of three (3) actions - approval, denial, or conditional approval. The Board may impose such restrictions upon the premises benefited by the variance such as may be necessary to comply with the standards established by this Ordinance, or to reduce or minimize the effects of such variance upon other properties in the neighborhood, and to better carry out the intent of the variance.

F. No re-application by a property owner for a variance shall be submitted to the Board of Adjustment and Appeals within a two (2) month period following a denial of such a request, except the Board may permit a new application or reconsideration if, in the opinion of the Board, new evidence or change of circumstances warrant it.

G. The Board may revoke a variance if any of the conditions established as part of granting the Variance request are violated.

**Subd. g. Enforcement.**

1. Enforcing Officer.

   It shall be the duty of the Zoning Administrator to cause the provisions of this Ordinance to be enforced through the proper legal channels.

2. Building Permit.

   A. Hereafter, no person, firm, or corporation shall erect, construct, enlarge, convert, or demolish any building or structure in the City, or cause the same to be done, without first obtaining a separate Building Permit for each such building or structure issued by the Building Official.

3. Procedure.

   A. Persons requesting a Building Permit shall fill out a building permit application. In those cases where a contractor is used, the contractor shall not commence construction until the building permit is displayed on the construction site.

   B. If the proposed construction conforms in all respects to the Zoning Ordinance, Minnesota State Building Code, all applicable codes, and upon payment of proper fees, a building permit shall be issued within a period of sixty (60) days of application. The owner shall be responsible to complete the permitted construction in its entirety as specified in the permit within twelve (12) months of the date of the permit.

   C. If the proposed construction involves a Zoning Amendment, Variance, Conditional Use Permit, or Interim Use Permit, the request shall be submitted either to the Planning and Zoning Commission or Zoning Board of Adjustment and Appeals for review and appropriate action and according to the procedures set forth in Sec. 5.6.04. d., e., f., and i..
4. Violations and Penalties.

Any person who shall violate or refuse to comply with any of the provisions of this Ordinance shall be subject, upon conviction thereof, to the provisions of Sec. 5.6.08 of this Ordinance. Each day that the violation is permitted to exist shall constitute a separate offense.

Violation of a condition imposed by any Conditional Use Permit may result in the termination of said permit. The City Council shall have the authority to terminate a Conditional Use Permit only after a public hearing has occurred.

Prior to the public hearing, the City shall notify the interested party or parties that termination proceedings concerning the nonconforming, conditional, incompatible, accessory, or home occupational use have been scheduled. Said notice shall be issued by certified mail to the party in violation and by publication of one (1) legal notice at least ten (10) days prior to the hearing date.

Subd. h. Planned Unit Developments (PUD) Residential Only

1. Purpose.

The purposes of this section are:

A. To encourage a more creative and efficient development of land and its improvements than is possible under the more restrictive application of zoning requirements such as lot sizes and building setbacks, while at the same time meeting the standards and purposes of the Comprehensive Plan of Staples, and preserving the health, safety and welfare of the citizens of Staples.

B. To allow for a mixture of residential units in an integrated and well-planned area.

C. To ensure concentration of open space into more useable areas, and the preservation of the natural resources of the site including wetlands, woodlands, steep slopes and scenic areas.

D. To facilitate the economical provision of streets and public utilities.

2. Permitted Uses.

Dwelling units in detached, clustered, semi-detached, attached or multi-storied structures or combinations thereof and customary accessory uses.


A Conditional Use Permit (CUP) shall be required of all planned unit developments. The City may approve the planned unit development only if it is found that the development satisfies all the following standards:
A. The proposed planned unit development is in conformance with the Comprehensive Plan of Staples. At a minimum, the City shall find that the planned unit development does not conflict with the Comprehensive Plan with regards to the following:

1. The use will not create an excessive burden on existing parks, schools, streets and other public facilities and utilities that serve or are proposed to serve the area.

2. The use is reasonably related to the overall needs of the City and is compatible with the surrounding land use.

3. The planned unit development is an effective and unified treatment of the development possibilities on the project site, and the development plans provide for the preservation of unique natural amenities such as streams, stream banks, wooded cover, rough terrain and similar areas.

4. The uses proposed will not have an undue and adverse impact on the reasonable enjoyment of neighborhood property, and will not be detrimental to surrounding areas.

B. The planned unit development meets or exceeds the following development criteria:

1. A minimum of two (2) principal structures is proposed.

2. The tract is at least two (2) acres in size.

C. The use is consistent with the requirements of the Zoning Ordinance.

D. The planned unit development can be planned and developed to harmonize with any existing or proposed development in the areas surrounding the project site.

E. Each phase of the proposed development is of sufficient size, composition and arrangement so that its construction, marketing and operation are feasible as to complete the unit, and that provision for and construction of dwelling units and common open space are balanced and coordinated. In addition, the total development is designed in such a manner as to form a desirable and unified environment within its own boundaries.

F. Financing is available to the applicant on conditions and in an amount that is sufficient to assure completion of the planned unit development. To evidence this finding, a written statement of financial feasibility that is accepted by the City shall be submitted by the applicant.
G. One (1) individual has been designated by the property owner(s) to be in control of the development.

H. It is reasonable to anticipate that the entire planned unit development will be fully platted in final form within five (5) years of approving the preliminary development plan.

4. Density Transfer.

A. In order to encourage the protection of natural resources, to allow limited development in an area with unusual building characteristics due to subsoil characteristics or to encourage creative land use, a density transfer system may be allowed whereby lot sizes smaller than normally required in a district will be allowed on the developable land in return for leaving the natural resource areas open from development. The number of dwelling units proposed for the entire site shall not exceed the total number permitted under the density indicated in the Comprehensive Plan where the land is located.

If the planned unit development is in more than one (1) density area, the number of allowable dwelling units must be separately calculated for each portion of the planned unit development that is in a separate area, and must then be combined to determine the number of dwelling units allowable in the entire planned unit development.

B. The Zoning Administrator shall determine the number of dwelling units that may be constructed within the planned unit development by dividing the gross acreage of the project area that can be developed by the maximum allowable density as set forth by zoning district.

5. Coordination with Subdivision Ordinance.

A. It is the intent of this ordinance that subdivision review under the Subdivision Ordinance be carried out simultaneously with the review of a planned unit development under this Section of the Zoning Ordinance.

B. The plans required under this Section must be submitted in a form that will satisfy the requirements of the Subdivision Ordinance for the Preliminary and Final Plats required under the Subdivision Ordinance.

6. Pre-Application Meeting.

Prior to the submission of any plan to the Planning Commission, the applicant shall meet with the Zoning Administrator and, if necessary, with the Planning and Zoning Commission to discuss the contemplated project relative to
community development objectives for this area in question and to learn the procedural steps and exhibits required. This includes the procedural steps for a Conditional Use Permit and a Preliminary Plat. The applicant may submit the simple sketch plat at this stage for informal review and discussion. The applicant is urged to avail him or herself of the advice and assistance of the planning staff to facilitate the review of the Preliminary Development Plan and Preliminary Plat.

7. Preliminary Development Plan.

A. An applicant shall make an application for a Conditional Use Permit following the procedural steps as set forth in Section 505.4 of this ordinance.

B. In order to grant approval to a Conditional Use Permit as required by this Section, or to grant approval to a preliminary development plan, the City Council shall find that the planned unit development complies with the requirements as established in Section 508.3 of this ordinance.

C. Preliminary Development Plan Documentation. The following exhibits shall be submitted by the developer as part of the application for a Conditional Use Permit, as required by the Zoning Administrator and the Planning Commission.

1. An explanation of the character and need for the planned development and the manner in which it has been planned to take advantage of the planned development regulations.

2. A statement of proposed financing of the planned unit development.

3. A statement of the present ownership of all of the land included within the planned development and a list of property owners within three hundred fifty (350) feet of the outer boundaries of the property.

4. A general indication of the expected schedule of development including sequential phasing and time schedules.

5. A map giving the legal description of the property including approximate total acreage and also indicating existing property lines and dimensions, ownership of all parcels, platting, easements, street rights-of-way, utilities, and buildings for the property, and for the area three hundred fifty (350) feet beyond.

6. Natural features map or maps of the property and area three hundred fifty (350) feet beyond showing contour lines at no more than two (2)
foot intervals, drainage patterns, wetlands, vegetation, soil and subsoil condition.

7. A map indicating proposed land uses including housing units and types, vehicular and pedestrian circulation, and open space uses.

8. Full description as to how all necessary governmental services will be provided to the development including sanitary sewers, storm sewers, water systems, streets and other public utilities.

9. An engineering report presenting results of a soil review of the site. If conditions warrant, soil borings of the site may also be required.

10. Any additional information requested by the Planning and Zoning Commission and City Council that may be required for clarification of the proposed project.

D. Preliminary Plat. The applicant shall also submit a Preliminary Plat and all the necessary documentation of all or that portion of the project to be platted as required under the Subdivision Ordinance. For purposes of administrative simplification, the public hearings required for the Conditional Use Permit and Preliminary Plat may be combined into one hearing or may be held concurrently.


A. Within one hundred twenty (120) days of City Council approval of the Preliminary Development Plan and the Preliminary Plat, the applicant shall file with the Zoning Administrator a Final Development Plan, and the Final Plat shall contain those changes as recommended by the Planning and Zoning Commission and approved by the City Council during the preliminary review process.

B. The Zoning Administrator shall submit the Final Development Plan and the Final Plat to the Planning and Zoning Commission for review.

C. The Commission shall review the Final Development Plan and the Final Plat and make its recommendation to the City Council within sixty (60) days of receiving the Final Development Plan and the Final Plat.

D. The City Council shall review the Final Development Plan and act on the Final Plat within sixty (60) days of receiving the recommendation of the Planning Commission. The City Council shall give notice and provide opportunity to be heard on the Final Development Plan to any person who has indicated to the City Council in writing that he or she wishes to be notified.
E. If the Final Development Plan is approved by the City Council, the Zoning Administrator shall issue a Conditional Use Permit for the total development to the applicant. Said Permit to include any and all conditions as required by the Preliminary Development Plan and the Final Development Plan.

F. Once the Final Development Plan and the Final Plat have been approved, the Final Plat shall be filed with the County Recorder’s Office.

G. A building permit may thereafter be issued for the area that is in compliance with the approved plans without further review of the plans by the City.


The construction and provision of all the common open spaces and public and recreational facilities that are shown on the Final Development Plan must proceed at the same rate as the construction of dwelling units. At least once every six (6) months following the approval of the final development, the Zoning Administrator shall review all the building permits issued for the planned development and examine the construction that has taken place on the site.

If he or she finds the rate of construction of dwelling units is faster than the rate at which common open space and public and recreational facilities have been constructed and provided, he/she shall forward this information to the City Council, which may revoke the Conditional Use Permit. If the developer or landowners fail to complete the open spaces and recreation areas within sixty (60) days after the completion of the remainder of the project, the City may finish the open space area and assess the cost back to the developer or landowner.


A. All land shown on the Final Development Plan as common open space must be conveyed under one of the following methods at the discretion of the City.

1. It may be conveyed to a public agency that will agree to maintain the common open space and any buildings, structures or improvements that have been placed on it.

2. It may be conveyed to a corporation, developer, homeowner association (incorporated or non-incorporated) or trustee provided in an indenture establishing association or similar organization for the maintenance of the planned development. The common open space must be conveyed to the party involved, subject to covenants approved
by the City Council, which restrict the common open space to the uses specified on the final development plan, and which provide for the maintenance of the common open space in a manner that assures its continuing use for its intended space.

B. If the common open space is conveyed to a private party and is not maintained properly to standards established by the City, the City shall have the authority to maintain the property and assess the costs incurred back to the land benefitted by the improvement.


No open area may be accepted as common open space under the provisions of this ordinance unless it meets the following standards:

A. The location, shape, size and character of the common open space must be suitable for the planned development.

B. Common open space must be used for amenity or recreational purposes. The uses authorized for the common open space must be appropriate to the scale and character of the planned development, considering the size, density, expected population, topography, and the number and type of dwellings to be provided.

C. Common open space must be suitably improved for its intended use but common open space containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements that are permitted in the common open space must be appropriate to the uses that are authorized for the common open space and must conserve and enhance the amenities of the common open space, highly regard to its topography and unimproved condition.

12. PUD Review and Amendments.

A. Annual Review. The Zoning Administrator and Planning and Zoning Commission shall review all PUD’s within the City by March 1 of each year and shall make a report to the City Council on the status of the development in each of the PUD districts. If the Commission finds that development has not occurred within the one (1) year after the original approval of the conditional use of the PUD, the Commission may recommend that the City Council revoke the Conditional Use Permit as set forth in Section 505 of this ordinance.

B. Revision to the PUD.
1. Changes in the location, placement and heights of buildings or structures may be authorized by the Zoning Administrator if required by engineering or other circumstances not foreseen at the time the Final Plan was approved.

2. Approval of the Planning and Zoning Commission and the City Council shall be required for the other changes such as rearrangement of lots, blocks and building tracts. These changes shall be consistent with the purpose and intent of the improved Final Development Plan.

C. Amendments to the PUD. Any amendment to the PUD shall require the same procedures as for the application for a Conditional Use Permit as set forth in Sec. 5.6.04, Subd. e.

Subd. i. Interim Use Permits – For Future Use

Sec. 5.6.05 Zoning Districts and District Provisions.

Subd. a. Zoning Districts.

The Zoning Districts are so designed as to assist in carrying out the intents and purposes of the Comprehensive Plan, which has the purpose of protecting the public health, safety, convenience and general welfare. All of the districts herein named may be subject to the Staples Municipal Airport Zoning Ordinance.

For the purposes of this Ordinance, the City of Staples, is hereby divided into the following Zoning Districts:

<table>
<thead>
<tr>
<th>Symbol</th>
<th>Name</th>
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<tbody>
<tr>
<td>R-1</td>
<td>Residential</td>
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<tr>
<td>R-2</td>
<td>Keeping Designation for Future Use</td>
</tr>
<tr>
<td>R-3</td>
<td>Multi-Family Residential</td>
</tr>
<tr>
<td>R-4</td>
<td>Manufactured/Mobile Home</td>
</tr>
<tr>
<td>B-1</td>
<td>Business</td>
</tr>
<tr>
<td>B-2</td>
<td>Keeping Designation for Future Use</td>
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<tr>
<td>I-1</td>
<td>Limited Industry</td>
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<tr>
<td>I-2</td>
<td>General Industry</td>
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<tr>
<td>A-1</td>
<td>Agricultural</td>
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</table>

Subd. b. Zoning Map.

The location and boundaries of the districts established by this Ordinance are set forth on the Official Zoning Map which is hereby incorporated as part of this Ordinance and which is on file with the Zoning Administrator's Office.

District boundary lines as indicated on the Zoning Map follow lot lines, right of way or centerlines of streets or alleys, right of way or centerline of streets or alleys projected, railroad right of way lines, the corporate limit lines, all as they exist upon
the effective date of this Ordinance. If said boundary lines do not follow any of the above, the district boundary lines are drawn as on the Zoning Map.

Any land which may be annexed to the City in the future shall be placed in the R-1 Urban Residential District until such time that the City Council amends the Zoning District, provided the City Council does not designate the Zoning Districts for said parcel at the time of annexation.

Subd. c. R-1 Residential

1. Purpose.

This district is established to maintain and promote residential development in designated areas.

2. Permitted Uses.

   A. Single family dwelling units.
   B. Plant nurseries or greenhouses; farms or truck gardens, but no retail stand for the display or sale of agricultural products or any other commercial structure shall be located thereon without a Conditional Use Permit.
   C. Public parks and playgrounds; golf courses or clubs.
   D. Churches, libraries, museums, schools and memorial buildings.
   E. Essential services - telephone, telegraph, power lines and necessary appurtenant equipment and structures.
   F. Signs, subject to the standards in Sec. 5.6.06. q..
   G. Manufactured/Mobile homes, subject to the standards in Sec. 5.6.06.
   H. Private garages.
   I. Licensed State residential facilities.
   J. Licensed day care facilities.
   K. Licensed adult day care facilities.

3. Accessory Uses.

Any incidental structure or buildings necessary to the conduct of a permitted use, including utility sheds, carports and screen houses for use of occupants of the principal structures.


   A. Two family dwellings.
   B. Day nurseries and nursery schools.
   C. Storage buildings greater than 200 square feet.
   D. Home occupations.
   E. Planned Unit Development.
   F. Solar energy systems and solar structures.
G. Any other use of the same character as those listed as permitted uses.

5. Minimum Lot Requirements and Setbacks. (Principal Structure)
   A. Lot Size (with public sewer and water) ........ 9,000 sq. ft.
      (with public sewer or water) ........... 11,000 sq. ft.
      (no public sewer) .......................... 22,000 sq. ft.
      (for more than two units add 4,000 sq. ft. for each additional unit)
   B. Lot width ................................................. 75 feet
   C. Front yard setback .................................. 25 feet
      a. Detached private garages – minimum 25 feet or in line
         with front of residential dwelling, whichever is greater.
   D. Rear yard setback ................................. 30 feet
   E. Side yard ............................................. 10 feet
   F. Side yard of corner lot .......................... 15 feet
   G. Maximum height ....................2-1/2 stories or 35 feet
      (excluding private garages)
   H. Maximum lot coverage ............................35 percent
   I. Additions to existing structures may be made without obtaining a variance
      if the side, rear, or front yard requirements are not reduced from the
      dimensions in existence due to the existing structure. An addition shall
      have the same or similar finish.

      Where adjacent structures have front yard setbacks less than those
      required, the minimum front yard setback shall be the average setback of
      such structures.

      Accessory buildings shall be located in the rear one-half (1/2) of an
      internal lot and shall be located no closer than ten (10) feet from side and
      five (5) feet from rear property lines.


   Additional requirements for parking, signs, fencing, sewage systems and other
   items are set forth in Sec. 5.6.06.

Subd. d. R-2 Keeping Designation – For Future Use

Subd. e. R-3 Multi-family Residential

1. Purpose.

   This district is created to allow multi-family dwellings including apartments and
   townhouses in appropriate areas of the City.

2. Permitted Uses.
   A. Apartments.
   B. Residential Condominiums.
C. Two-family dwellings.
D. All uses permitted in the R-1 District.

3. Accessory Uses.
All accessory uses permitted in the R-1 District.

A. Funeral homes, crematoria and cemeteries.
B. Hospital, clinics, sanitoriums, public and semi-public buildings, such as City Hall, Fire and Police Stations.
C. Rest homes, boarding and nursery schools.
D. All other conditional uses permitted in the R-1 District.

5. Minimum Lot Requirements and Setbacks. (Principal Structure)
A. Lot size (Single family).........................9,000 sq. ft.
   (Duplex) ................................................9,000 sq. ft.
   (Multi-family)…For more than two units add 3,000 sq. ft. for each additional unit.
B. Lot width ..................................................75 feet
C. Front yard setback .................................25 feet
D. Rear yard setback .................................30 feet
E. Side yard ..................................................10 feet
   (The common walls of common wall dwellings are exempt.)
F. Side yard of corner lot ..............................10 feet
G. Maximum height .................................3 stories or 40 feet
H. Maximum lot coverage........................... 35 percent
I. Additions to existing structures may be made without obtaining a variance if the side, rear, or front yard requirements are not reduced from the dimensions in existence due to the existing structure.

6. Minimum Floor Area.
A. Multi-family dwellings of three or more families.
   (1) Efficiency ............................................500 sq. ft.
   (2) One bedroom ......................................600 sq. ft.
   (3) Two bedroom .....................................750 sq. ft.
   (4) Three bedroom .................................1,000 sq. ft.

   Each additional bedroom shall require 250 sq. ft. of additional minimum floor area.
B. Single Family Dwellings.
   (1) One story with basement .....................800 sq. ft.
   (2) One story without basement ...............1,000 sq. ft.
(3) Split level ......................................................960 sq. ft.
(4) Split entry ......................................................816 sq. ft.

7. General Regulations.

Additional requirements for parking, signs, fencing, sewage systems and other items are set forth in Sec. 5.6.06.

Subd. f. R-4 Mobile/Manufactured Homes

1. Purpose.

This district is created to allow mobile/manufactured home parks in areas of the City. All mobile/manufactured homes shall be located in these parks only. mobile/manufactured home parks shall provide ingress and egress roadways, storm shelters, open space for playgrounds, recreation and park purposes, necessary sewer, water, electricity, and refuse services.

2. Minimum Lot Requirements and Setbacks.

A. Lot size ......................... Each mobile home site shall contain at least 5,000 sq. ft. of land area for the exclusive use of the occupant.
B. Lot width ..............................................50 feet
C. Front yard setback .........................20 feet
D. Rear yard setback .........................25 feet
E. Side yard .............................................10 feet
F. Maximum lot coverage . . The area occupied by a mobile/manufactured home shall not exceed 30% of the total area of the mobile home site.

An accessory structure such as an awning, cabana, storage structure, carport, windbreak or roofed porch which shall be considered to be a part of the mobile/manufactured home.

Subd. g. B-1 Business District

1. Purpose.

The purpose of this district is to foster business growth and development.

2. Permitted Uses.

A. Commercial establishments offering merchandise or services to the public. Such establishments to include but not be limited to the following:

(1) Retail establishments such as groceries, hardware, drug, clothing, furniture stores, eating and drinking places, farm implement dealers, drive-in restaurants and businesses, recreation equipment sales, automobile sales lots, bait and sporting goods shops, lumber yards and construction materials sales, and garden and landscaping sales and services.
(2) Personal services such as laundry, barber, shoe repair shops and photography studios.

(3) Professional services such as medical and dental clinics, architects and attorney offices.

(4) Repair services such as jewelry, radio and television repair shops.

(5) Finance, insurance and real estate services.

(6) Entertainment and amusement services such as motion picture theatres and bowling alleys.

B. Public and semi-public buildings such as post office City Hall, Fire and Police Stations.

C. Private clubs.

D. Apartments and condominiums, provided they are located above the first floor.

E. Automobile parking lots.

F. On-sale and off-sale liquor establishments.

G. Motels and hotels.

H. Improvements to existing residential land uses subject to residential setbacks.

3. Accessory Uses.

Uses incidental to the principal use such as off-street parking, loading and unloading areas, and storage of merchandise.


A. Warehousing and wholesaling.

B. Solar energy systems and structures and earth-sheltered structures.

C. Manufacturing, process packaging, or assembly of products and materials.

D. Residential land uses not listed under permitted uses.

E. Recreational facilities.

F. Automobile service stations and washing services.

G. Funeral homes and crematoria.

H. Retail establishments, offices and other businesses, which in the opinion of the Planning and Zoning Commission and City meet the purposes of the district.

5. Minimum Lot Requirements and Setbacks.

A. Lot area regulations ........................................2,000 sq. ft.

B. Lot width ............................................................... 20 feet
C. Front yard setback ................................................. None required
D. Rear yard setback ................................................ None required
Ten (10) feet if adjacent to Residential.
E. Side yard .............................................................. None required
Ten (10) feet if adjacent to Residential.
F. Parking..........Any building or use shall comply with the
off-street parking requirements as provided for in Sec. 5.6.06.
G. Maximum height .................................................... 60 feet


To the extent possible, a service street shall be located between the arterial street
and the business establishment(s). The service street shall provide access to the
arterial street subject to service street standards required by the City. Service street
traffic shall not be routed on or directed to local residential streets.

Service Street Standards.
A. Each service street shall have a minimum of fifty (50) feet of right of way
exclusive of adjoining principal arterial right of way.
B. Each service street shall be at least twenty-four (24) feet wide and must be
surfaced.
C. Two way traffic shall be allowed on service streets.
D. No parking shall be allowed on service streets.
E. Access from service streets to principal arterials shall be no more frequent
than on (1) access for each five hundred (500) feet of principal arterial
frontage.
F. Service streets shall be dedicated to the City.

Subd. h. B-2 Highway Business District – For Future Use

Subd. i. I-1 Limited Industry

1. Purpose.

This district is intended to provide for compact, limited and highway oriented
industries and industrial uses that may suitably be located in areas of relatively
close proximity to non-industrial development. As such, industries, that pose
problems of air pollution, noise, vibrations, etc., will be restricted from this
district.

2. Permitted Uses.

A. Solar energy systems, solar and earth-sheltered structures.

B. Any production, processing, cleaning, servicing, testing, repair or storage
of materials, goods or products which is not stated as a conditional or
prohibited use provided said industry can conform to prescribed
performance standards and is not impervious or offensive to the occupants or adjacent premises.

C. Transportation or freight terminal.
D. Wholesales business.
E. Warehouse.
F. Public service buildings.
G. Public vehicle garage.
H. Essential services - telephone, telegraph and power distribution poles and lines.

3. Accessory Uses.
Any incidental repair, processing or storage necessary to conduct a permitted principal use.

A. Restaurants.
B. Retail trade.
C. Mining and extraction.

5. Prohibited Uses.
A. Distillation of bone, coal, tar, petroleum, grain or wood.
B. Manufacturing or bulk storage of explosives.
C. Fertilizer manufacturing, compost or storage processing of garbage, offal, dead animals, refuse, or rancid fats.
D. Livestock feeding yards or slaughter houses, or processing plants.
E. Manufacturing, refining, or processing of chemicals.
F. Junk yards.
G. Any industry, that creates an excessive odor, noise, or air environmental pollution problem.

A. Lot area..............................................10,000 sq. ft.
B. Lot width ...........................................100 feet
C. Front yard setback ...............................30 feet
D. Rear yard setback .................................20 feet
E. Side yard, interior lot ............................5 feet
F. Side yard, corner lot ..............................20 feet
G. Maximum height .................................60 feet
H. Maximum lot coverage.......................... 40 percent

7. Industrial Performance Standards.
   A. Noise, odors, smoke and particulate matter may not exceed Minnesota Pollution Control Standards.
   B. All fabrication, manufacturing processing or production shall be undertaken within an enclosed building.
   C. Screening from public streets and residential districts shall be provided for outdoor storage of materials, goods, parking and loading areas. The screening may consist of either a fence, dense hedge, berms or similar opaque materials. Screening shall be maintained by the property owner and replaced if plants die or are damaged.

8. General Regulations.
   Requirements and standards for signs, parking, etc., as set forth in Sec. 5.6.06.

Subd. j. I-2 General Industry

1. Purpose.
   This district is created to allow general industry which due to their nature and size do not conform to the standards and criteria of limited industry.

2. Permitted Uses.
   A. Solar energy systems, solar and earth-sheltered structures.
   B. Any production, processing, cleaning, servicing, testing, repair or storage of materials, goods or products subject to the performance standards set forth in this section.
   C. Motor freight terminals.
   D. Highway maintenance shops and yards.
   E. Public utility buildings.
   F. Essential services - telephone, telegraph and power distribution poles and lines.
   G. All industry permitted in I-1, subject to the performance standards set forth in this section.

3. Accessory Uses.
   Any incidental repair, processing or storage necessary to conduct a permitted principal use.

   A. Manufacturing, refining, processing of chemicals.
   B. Junk yards or salvage yards.
C. Extracting, processing and storage of sand, gravel, stone or other raw materials.
D. Fertilizer manufacturing, compaction, storage, or processing of garbage.
E. Livestock slaughter houses or processing plants.

5. Minimum Lot Requirements and Setbacks.
   A. Lot area ........................................... 10,000 sq. ft.
   B. Lot width ........................................ 100 feet
   C. Front yard setback .............................. 30 feet
   D. Rear yard setback .............................. 20 feet
   E. Side yard, interior lot ......................... 5 feet
   F. Side yard, corner lot ............................ 20 feet
   G. Maximum height ................................ 60 feet
   H. Maximum lot coverage ....................... 50 percent

6. Industrial Performance Standards.
   A. Noise, odors, smoke and particulate matter may not exceed Minnesota Pollution Control Standards.
   B. All fabrication, manufacturing, processing or production shall be undertaken within an enclosed building.
   C. Screening from public streets and residential districts shall be provided for outdoor storage of materials, goods, parking and loading areas. The screening may consist of either a fence, dense hedge, berms or similar opaque materials. Screening shall be maintained by the property owner and replaced if plants die or are damaged.

7. General Regulations.
   Requirements and standards for signs, parking, etc., as set forth in Sec. 5.6.06.

Subd. k. A-1 Agricultural

1. Purpose.
   This district is established to allow agricultural use within the City limits.

2. Permitted Uses.
   A. Firearms for hunting and predatory control subject to all State and Federal laws and regulations.
   B. Commercial agriculture and horticulture.
   C. Farm buildings and structures.
   D. Single-family residential structures.
   E. Farm drainage and irrigation systems.
F.  Roadside stand for the sale of agriculture products.
G.  Historic sites.
H.  Public recreation.
I.  Agricultural feedlots, provided that no agricultural feedlot shall be located within 2,500 feet of a residential district.
J.  Essential services - telephone, power lines and necessary appurtenant equipment and structures.
K.  Churches, schools.
L.  City buildings.
M.  Home occupations.

3. Accessory Uses.

Any incidental structures, buildings or machinery necessary to the conduct of a permitted use, including private garages, car ports, screen houses and storage buildings for use of occupants of the principal structures.


A. Cemeteries.
B. Agricultural products, livestock processing plants and commercial feedlots.
C. Mobile home parks.
D. Nursery and garden supplies.
E. Mining, sand, and gravel operations.
F. Nursing homes, hospitals and other buildings used for the treatment of human ailments.

5. Minimum Lot Requirements and Setbacks.

A. Lot area ........................................2-1/2 acres
B. Lot width .............................................. 300 feet
C. Front yard setback ..........................50 feet
D. Rear yard setback ..............................50 feet
E. Side yard, interior lot ..........................30 feet
F. Side yard, corner lot ................................50 feet
G. Maximum height 2½ stories or 35 feet

(This height limitation shall not apply to grain elevators, silos, windmills, elevator lags, cooling towers, chimneys, and smokestacks, church spires, antennas and towers.)
Subd. 1. Business Corridor Overlay District

1. Intent and Purpose.

The Business Corridor Overlay District provides a higher standard of appearance for the business corridor which serves as the main east/west entrance to the community by establishing minimum standards for buildings and the properties located within the District. The City Council finds that requiring compliance with certain minimum standards in the designated business areas of the City, which are highly visible to those entering the City, will contribute to the community’s positive image, encourage travelers to stop and visit businesses in the City, and promote additional economic development in the area. These standards are further intended to ensure the coordinated design of buildings, building additions and accessory structure exteriors in order to prevent visual disharmony, minimize adverse impacts on adjacent properties from buildings which are or may become unsightly, and prevent the construction of buildings that detract from the character and appearance of the area. It is not the intent of the City to unduly restrict design freedom when reviewing and approving a project’s architecture in relationship to the proposed land use, site characteristics and interior building layout.

2. Scope, Applicability.

This overlay district shall apply to all properties zoned B-1 (Business District) located north of the BNSF Railroad tracks and south of 3rd Avenue North as shown on the City’s zoning map.

As of August 1, 2009, all additions and exterior alterations made to existing buildings and construction of accessory buildings in this District shall be constructed of materials comparable to those used in the original construction, shall be designed in a manner conforming to the original building’s architectural design and appearance, and shall meet all other standards set forth in this Section and this Ordinance generally. The standards contained in this Section shall also apply to the construction of new buildings and to the reconstruction of existing buildings.

If a property is adjacent to more than one roadway, the roadway with a higher transportation functional classification shall be considered the primary roadway for the purposes of this Section. If the roadways have the same functional classification, the one which regularly receives more traffic will be considered the primary roadway.

3. Performance Standards.

Performance standards are established for this District to achieve an attractive area consistent with the purpose of this District and to ensure that land uses, buildings and functions are compatible within the District. Additional standards may be
identified by the City during the review and approval process due to the particular characteristics of each site, the proposed development of the site and the uses on adjacent property. The plans and proposed use of a property shall conform to the performance standards prior to approval of a building or zoning permit. The applicant or owner shall supply plans and data necessary to demonstrate such conformance. Unless otherwise noted in this Section, the standards of the underlying zoning district shall apply unless more restrictive standards apply per this Section.

(A) Building and Site Design.

(1) In general, buildings constructed shall be attractive and be composed of materials that will maintain their appearance over the expected life of the building. All exterior walls of buildings shall be of a consistent quality.

(2) Main entrances of buildings shall be emphasized by: being recessed into the building; projecting from the building; by accent materials; or by a change in grade.

(3) Exterior building walls that are greater than 60 feet in length must be divided visually into sections or bays to break up the mass.

(4) The principal building should be oriented so that the front of the building faces the primary roadway adjacent to the property. Where fronting toward the primary roadway is not feasible due to access and site constraints, the building should be designed in such a manner so as to convey a pleasing appearance from the primary roadway adjacent to the property.

(5) Rooftop mechanical equipment shall be screened in a manner that is incorporated into the architectural form of the building.

(6) All materials and facilities for recycling and trash shall be kept inside of the principal building or within a completely screened area. If a screened area is used, it must be made of the same or better material used on the principal building and must be architecturally compatible with the primary building.

(7) No outdoor storage shall be permitted unless such storage is visually screened from view from the primary roadway adjacent to the property constructed with the same or better material used on the principal building and must be architecturally compatible with the primary building.
(8) Drainage pipes on exterior building walls facing the primary roadway must be integrated into the building’s design and not be apparent from the primary roadway.

(B) Building Materials.

(1) All exterior wall finishes on a building shall be comprised of a combination of at least three of the following materials:

(i) Clay or masonry brick;
(ii) Natural stone;
(iii) Glass;
(iv) Masonry stucco;
(v) Customized concrete masonry with striated, scored or broken faced brick type units (sealed) with color being consistent with the design theme;
(vi) Poured-in-place, tilt-up or pre-cast concrete (poured-in-place and tilt-up walls must have a finish of stone, a texture or a coating);
(vii) Steel frame structures with architectural flat metal panels or glass curtain walls; or
(viii) Other comparable or superior materials as approved by the City Council or Planning and Zoning Commission.

(2) The following types of buildings are prohibited: non-decorative exposed concrete block buildings; corrugated metal-sided buildings. Wood, vinyl, steel or fiber cement sided buildings are prohibited unless enhanced on all elevations by the application of brick, decorative masonry, or decorative stucco surfaces in combination with decorative fascia overhangs and trim.

(C) Architectural Elements.

(1) Architectural elements on buildings shall be combined with landscaping to add interest to building, and especially to break up long expanses.

(2) Buildings must incorporate no fewer than three of the following architectural elements. The architectural elements must have sufficient visual impact to be noticeable from the primary roadway adjacent to the property.

(i) Accent materials;
(ii) Public art;
(iii) Tile work and moldings integrated into the building façade;
(iv) Windows;
(v) Building wall recesses/projections;
(vi) Varied roof lines;
(vii) Articulated cornice lines; or
(viii) Canopies/awnings/porticos.

(3) Should roof overhangs be necessary, structural overhangs on buildings must vary as follows:

(i) One foot overhang for buildings less than 50 feet in width;
(ii) Two foot overhang for buildings 50 to 100 feet in width; or
(iii) Three foot overhang for buildings greater than 100 feet in width.

(D) Landscaping.

(1) A minimum of 10 percent of the total area of each newly developed or substantially redeveloped site shall be devoted to landscaped open space.

(2) All open areas of the site not used for the buildings, sidewalks, parking, driveways, loading areas or storage shall be landscaped with trees, grass, shrubs or other planted ground cover.

(3) All parking areas shall be landscaped with a buffer strip not less than 5 feet wide located between the edge of the right-of-way of the primary roadway adjacent to the property and the surface of the parking area. For multi-tenant buildings and lots exceeding five acres, in addition to the above, planting beds of perennial or annual flowers shall be established and maintained in the buffer strip.

(E) Lighting.

(1) Lighting shall be directed downward, inward and away from adjacent streets and adjoining uses.
(2) All exterior lighting shall be of a style that is down lit in order to reduce overhead glare.

(F) Utilities.

(1) All on-site utilities including, but not limited to, electrical, telephone and cable shall be installed underground on the site. This requirement shall apply to utilities running from a public utility
easement or street right-of-way to buildings or other structures and to utilities supplying service between buildings or other structures.

(G) Off-Street Loading Areas.

(1) No off-street loading areas may be located on the sides of a building that fronts onto the primary roadway adjacent to the property.

4. Variance

A business owner required by a franchise agreement or similar agreement to comply with prescribed design standards for their franchised business which are inconsistent with the standards established in this Section may apply for a variance from strict compliance with these standards upon an affirmative showing of such incompatibilities and that the owner cannot reasonably comply with these standards without breaching the agreement. If the City grants a variance from specific standards it finds to be incompatible, the owner shall remain responsible for complying with the remaining standards of this Section.

The City Council hereby approves changing the City’s zoning map to show the new district and authorizes and directs City staff to make the necessary changes to the zoning map.

Sec. 5.6.06. Performance Standards.

Subd. a. Purpose.

The performance standards established in this section are designed to encourage a high standard of development by providing assurance that neighboring land uses will be compatible. The performance standards are designed to prevent and eliminate those conditions that cause blight or are detrimental to the environment.

Before any building permit is approved, the Zoning Administrator shall determine whether the proposed use will conform to the performance standards. The developer or landowners shall supply data necessary to demonstrate such conformance. Such data may include a description of equipment to be used, hours of operation, method of refuse disposal, and type and location of exterior storage.

The performance standards shall apply to future development in all districts and to existing development within the respective compliance periods as noted in each section. Compliance may be waived by the City if a building condition created under prior ordinances physically precludes the reasonable application of the standards.


1. Solar energy systems and solar structures shall be a permitted use in all districts except commercial, provided that the system is in compliance with minimum lot requirements and setbacks.
2. Solar energy systems and solar structures may be exempted from setback, height, and lot coverage restrictions in residential district by a Conditional Use Permit.

3. Solar energy systems and solar structures shall be permitted in commercial districts by a Conditional Use Permit.

Subd. c. Wood Storage.

The storage of wood for wood stoves, fireplaces or wood furnaces shall be permitted in the back half of the lot, but not to exceed ten (10) percent of the back half of the lot. The minimum setback from property lines shall be five (5) feet. The maximum height of stored wood shall be six (6) feet, and shall be maintained to minimize unsightliness and rodents.

Subd. d. Bulk Storage (Liquid)

All commercial or industrial uses associated with the bulk storage of oil, gasoline, liquid fertilizer, chemicals, and similar liquids shall require a Conditional Use permit in order that the City Council may have assurance that fire, explosion, or water or soil contamination hazards are not present (that would be detrimental to the public health, safety and general welfare). All existing, above-ground liquid storage tanks having a capacity in excess of ten thousand (10,000) gallons shall secure a Conditional Use Permit within twelve (12) months following enactment of this Ordinance. All conditional use permitees shall comply with all prevailing MPCA regulations.

Subd. e. Screening

1. Screening.

   A. Screening shall be required in residential zones where (1) any off-street parking area contains more than four (4) parking spaces and is within eighteen (18) feet of an adjoining residential zone; and/or (2) where the driveway to a parking area of more than six (6) parking spaces is within fifteen (15) feet of an adjoining residential use or zone. The eighteen (18) foot requirement is met by a street or an alley.

   B. Where any business or industry (structure, parking or storage) is located adjacent to property zoned or developed for residential use, that business or industry may, at the discretion of the City, be required to provide screening along the boundary of the residential property. Screening may also be required where a business, parking lot or industry is located across the street from a residential zone, but not on that side of a business or industry considered to be the front as determined by the Zoning Administrator.

   C. The screening required herein may consist of a fence, trees, shrubs or berms which obscures the stored material(s), but shall not extend within fifteen (15) feet of any street or driveway. The screening shall be placed along the property lines or in case of screening along a street, twenty (20) feet from the street right of way with landscaping between
the screening and the pavement. Plantings of a type approved by the City Council may also be required in addition to or in lieu of fencing.

**Subd. f. Fencing**

For purposes of this Ordinance, a fence is defined as any partition, structure, wall or gate erected within the required yard.

1. All boundary line fences shall be entirely located upon the property of the person, firm or corporation constructing, or causing the construction of such fence with a minimum setback of eighteen (18) inches. The Zoning Administrator may require the owner of the property upon which a fence now exists, or may require any applicant wishing to construct a fence, to establish the boundary lines of this property by a survey thereof to be made by any registered land surveyor.

2. Fences shall be constructed of standard fencing materials for residential/commercial applications and shall not exceed six (6) feet in height in residential districts or eight and one-half (8-1/2) feet in height in commercial-industrial districts. The maximum height of a fence or hedge on a corner lot shall be three (3) feet for a distance of ten (10) feet from the corner. Fences higher than these shall require a Conditional Use Permit. Non-conforming uses existing on the effective date of this Ordinance are exempt from this provision.

**Subd. g. Permitted Encroachments**

The following shall be considered as permitted encroachments on setback and height requirements except as provided in this Ordinance.

In any yard, posts, off-street open parking spaces, flues, leaders, sills, pilasters, lintels, cornices, eaves, gutters, awnings, open terraces, service station pump islands, open canopies, step chimneys, flag poles, ornamental features, open fire escapes, sidewalks and fences, and all other similar devices incidental and appurtenant to the principal structure except as hereinafter amended. Decks are also exempted from the rear yard setback requirements except that a deck may not be located closer than five (5) feet from the rear property line. Awnings are permitted as encroachments, so long as the awning is set back from the back of the curb a distance of five (5) feet and the lowest point on the awning is no less than eight (8) feet from the ground level below the awning.

**Subd. h. Accessory Buildings, Structures and Private Garages**

1. In Residential Districts.
   
   A. No accessory buildings on an internal lot may be located within ten (10) feet of the side or five (5) feet of the rear lot lines or from the designated setback of fifteen (15) feet on the street side of a corner lot.

   B. No accessory building or private detached garage shall exceed the maximum height of eighteen (18) feet to the peak from the average level of the highest and lowest point of that portion of the lot covered by the building.
C. Utility sheds or sheds which are attached to a principal structure and are separated from the principal structure by a wall may be permitted by Conditional use permit. If detached, they shall not be located closer than ten (10) feet from the principal structure. Permanent foundation or slab shall be required. Such sheds shall be anchored and not be larger than two hundred (200) square feet in area.

D. No private garage used or intended for the storage of passenger automobiles shall exceed eight hundred (800) square feet of gross area nor shall any access door or other opening exceed the height of nine (9) feet. Permanent foundation or slab shall be required. The garage must be of same or similar finish and be of homogeneous design with the principal structure.

E. Accessory buildings shall not occupy more than fifty percent (50%) of the rear yard. The building must be of same or similar finish and be of homogeneous design with the principal structure.

2. In Commercial and Industrial Districts.

A. No accessory building shall exceed the height of the principal building except by Conditional Use Permit.

B. Accessory buildings shall be located any place to the rear of the principal buildings, except where prohibited by other sections of the Ordinance.

Subd. i. Dwelling Units Prohibited

No garage, tent, trailer, recreational vehicle or accessory building shall at any time be used as a residence.

Subd. j. Relocating Structures

1. Permit Required.

Before raising, holding up or moving any building; except newly constructed homes and newly constructed utility sheds that have two hundred (200) square feet, or less, the owner shall obtain a Conditional Use Permit from the City Council. An application for such permit shall indicate the origin and destination of such building, the route over which it is to be moved and shall state the time in which the moving of such building shall take place. The permit shall also indicate the location of the lot on which the house is to be located, the dimensions of the lot and the proposed location of the structure on the lot along with setback distances. No permit to move a building shall be issued unless and until the following conditions are fully complied with and approved by the City Council.

A. The building to be moved must comply in all respects with pertinent City Rules and Ordinances.

B. The lot on which the building is to be located must meet all the minimum dimensional requirements of the zoning district in which it is located.
C. The building must be placed on the lot so as to meet all the front, side and rear yard requirements as set forth in the Zoning Ordinance.

D. The building must be moved by a Licensed Building Mover, except utility sheds that have two hundred (200) square feet, or less.

2. Electrical Corrections Requirements.

In every case in which a permit shall be issued as herein provided for the removal required or the displacement of any overhead electrical or other wires, it shall be the duty of the person, association, or corporation owning, operating, or controlling said wires to remove or displace the same.

The person to whom said permit shall have been issued shall notify the person, association, or corporation owning, operating, or controlling said wires to remove or displace the same to facilitate the removal of said wires sufficiently to allow the passage of said buildings along the street over which said wires are suspended.

3. Application Procedure.

The Zoning Administrator shall submit the application to the Planning and Zoning Commission for approval and recommendations to the City Council at the next stated meeting of said Commission. The Commission shall determine whether such application shall conform to the immediate surrounding community. The Planning and Zoning Commission shall call a public meeting of resident owners within a radius of three hundred fifty (350) feet from subject property for owner's review of the proposed application. The Commission will determine the application on its merits and make its recommendations to the Council.

The City Council shall take action to approve or disapprove the permit within thirty (30) days after receiving the recommendation of the Planning and Zoning Commission.

Subd. k. Vacated Streets

Whenever any street, alley, easement or public way is vacated by official action, the zoning district abutting the centerline of said vacated area shall not be affected by such proceeding.

Subd. l. Manufactured/Mobile Homes

1. Standards.

Mobile/Manufactured homes shall be permitted in the R-1 and R-3 Districts provided they meet the following minimum standards:

A. Width is twenty-four (24) feet or more.

B. Has a minimum floor area of eight hundred (800) square feet.

C. The dwelling is placed on a permanent continuous foundation.

D. The mobile home shall be similar to existing homes. The longest dimension of this structure shall be placed parallel to the narrowest dimension of the lot, and the architectural design, color, roof pitch or
lack of it, roof overhang or lack of it, and exterior material of all buildings and structures shall not be so inconsistent with surrounding buildings and areas as to constitute a blighting influence.

E. The dwelling shall be connected to City sewer and water system if available.

F. All other requirements of State law and City Codes are met.

G. Existing mobile/manufactured homes shall only be replaced with mobile/manufactured homes which meet the above minimum standards.

**Subd. m. Manufactured/Mobile Home Parks**

1. Performance Standards.
   
   A. Public Health.
      
      (1) Soils and Topography - Condition of soil, groundwater level, drainage, and topography shall not create hazards to the property or to the health and safety of the occupants. The site should not be exposed to objectionable smoke, noise, odors, or other adverse influences, and no portion shall be subject to unpredictable and/or sudden flooding.
      
      (2) Sewage Disposal and Water Supply - All mobile homes shall be properly connected to a central water supply and a central sanitary sewer system. All water and sewer systems shall be constructed in accordance with plans and specifications approved by the City and State Department of Health.
      
      (3) Refuse - The storage, collection, and disposal of refuse in the mobile home park shall be so conducted as to create no health hazards, rodent harborage, insect breeding, accident or fire hazards, or air pollution.
   
   B. Fire Protection
      
      (1) Mobile Home Parks shall be kept free of litter, rubbish, and other flammable material.
      
      (2) Fire hydrants shall be installed if the park water supply system is capable to serve them in accordance with the following requirements: fire hydrants, if provided, shall be located within five hundred (500) feet of any mobile home, service building or other structure in the park. Fire hydrant location and water main size shall be approved by the engineer.

2. Manufactured/Mobile Home Park Lots.
   
   A. Lot Requirements.
(1) Each mobile home site shall contain at least five thousand (5,000) square feet of land area for the exclusive use of the occupant and shall be at least fifty (50) feet wide.

(2) Mobile homes shall be placed upon lots so that there shall be at least ten (10) feet from the side lot line, twenty (20) feet between the front of the mobile home and front lot line, and twenty-five (25) feet between the rear of the mobile home and the rear lot line.

(3) The area occupied by a mobile home shall not exceed sixty percent (60%) of the total area of a mobile home site; and may be occupied by a mobile home, a vehicle, a utility shed or building, a carport, an awning or other structures.

3. Mobile Home Park Design.

A. Streets.

(1) All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. Such access shall be provided by streets, driveways, or other means.

(2) Entrances to mobile home parks shall be designed to minimize congestion and hazards and to allow free movement of traffic on adjacent streets. No parking shall be permitted on the park entrance street for a distance of thirty (30) feet from its point of beginning.

(3) Surfaced roadways shall be of adequate width to accommodate anticipated traffic, and in any case shall meet the following minimum requirements:

All streets except minor streets shall be at least twenty-four (24) feet in width. Dead end streets shall be limited in length to five hundred (500) feet and shall be provided at the closed end with a turn-around having an outside roadway diameter of at least ninety (90) feet. All dead end streets shall be marked with approved signs at the entrance to the dead end street. Minor streets shall be a minimum of twenty (20) feet in width (acceptable only if less than five hundred [500] feet long and serving less than twenty-five [25] mobile homes of any length if mobile home lots abut on one side only) and shall have one way traffic or parking on one side only.

(4) All streets shall be provided with a paved, concrete or bituminous surface. Pavement edges shall be protected with Class 5 gravel or equal to prevent raveling of the wearing surface and shifting of the pavement base. Street surfaces shall be maintained in a satisfactory condition.
(5) Longitudinal grades of all streets shall range between 0.40% and 8.00%. Transverse grades of all streets shall be sufficient to insure adequate transverse drainage.

(6) Streets within fifty (50) feet of an intersection shall be at right angles.

(7) A distance of at least eighty-five (85) feet shall be maintained between the centerlines of offset intersecting streets within the park. Intersections of two (2) or more streets at one point shall be avoided.

(8) All parts of the park street system shall be adequately lighted to insure safe and efficient traffic movement. Potentially hazardous locations such as major street intersections, steps or pedestrian ramps shall be individually illuminated with adequate lighting.

B. Walkways

(1) All parks shall be provided with safe, convenient, all season pedestrian access of adequate width for intended use, durable and convenient to maintain, between individual mobile homes and park streets and all community facilities provided for park residents. Sudden changes in alignment and gradient shall be avoided.

(2) A common walk system shall be provided and maintained between locations where pedestrian traffic is concentrated. Such common walks have a minimum width of five (5) feet.

(3) All mobile homes shall be connected to common walks, to paved streets or to paved driveways or parking spaces connecting to a paved street. Such individual walks shall have a minimum width of two (2) feet.

C. Parking.

Each mobile home lot shall have off street parking space for at least two (2) automobiles. Each space shall be ten (10) feet by twenty (20) feet minimum.

D. Parks and Recreation Areas.

A minimum of twelve percent (12%) of the total mobile home park shall be dedicated and developed for parks and recreation areas for the benefit of the mobile home park.

E. Landscaping and Screening.

A properly landscaped area shall be adequately maintained around each mobile home park. Exposed ground surfaces in all parts of every mobile home park shall be paved, or covered with stone screening or other solid material, or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable
dust. All mobile home parks adjacent to industrial, commercial, or residential land uses shall be provided with screening such as fences or natural growth along the property boundary lines separating the park from such adjacent use.

F. Mobile/Manufactured Home Stands.

(1) The area of the mobile home stand shall be improved to provide adequate support for the placement of the mobile home.

(2) The mobile home stands shall not heave, shift or settle unevenly under the weight of the mobile home due to frost action, inadequate drainage, vibration, or other forces acting upon the structure.

(3) Each park shall have a minimum area of five (5) acres.

G. Structures.

(1) Every structure in the mobile home park shall be developed and maintained in a safe, approved, and substantial manner. A building permit shall be required for all structures. The exterior of every such structure shall be kept in good repair. Portable fire extinguishers rated for electrical and liquid fires shall be kept in all service buildings and other locations conveniently and readily accessible for use by all occupants. All structures shall also require a smoke detector.

(2) The area beneath all mobile homes shall be enclosed with a material that shall be generally compatible with the condition and constructions of the home, except that such enclosure must be so constructed that it is subject to reasonable inspection. No obstruction shall be permitted that impedes the inspection of plumbing and electrical facilities.

4. Park Management.

A. The operator of a mobile home park shall operate the park in compliance with this Ordinance and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.

B. The operator shall notify park occupants of all applicable provisions of this Ordinance and shall inform them of their duties and responsibilities under this Ordinance.

C. An adult caretaker must be accessible at all times and is responsible for the maintenance of the park at all times.

D. Each park shall have an illuminated sign with the park name and telephone number of the park operator.

E. The operator at every mobile home park shall maintain a registry in the office of the mobile home park indicating the name and address of
each permanent resident. Each mobile home site shall be identified by either number, letter, or both.

F. A map of the mobile home park shall be displayed at the mobile home park office and individual lot numbers displayed at each site.

G. No public address or loudspeaker system shall be permitted.

H. No person shall erect, construct, reconstruct, relocate, alter, maintain, use or occupy a cabana or structure in a mobile home park without the written consent of the owner or operator of the mobile home park.

I. Signs located on the park to advertise the location and role of mobile homes are limited to one location on the park and must conform to the sign requirements of this Code.

5. Inspection of Mobile Home Parks.

A. The Permit Issuing Authority is hereby authorized and directed to make such inspections as are necessary to determine satisfactory compliance with this Ordinance.

B. The Permit Issuing Authority shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions related to the enforcement of this Ordinance.

C. The Permit Issuing Authority shall have the power to inspect the register containing a record of all residents of the mobile home park.

D. It shall be the duty of the park management to give the Permit Issuing Authority free access to all lots at reasonable times for the purpose of inspection.

E. It shall be the duty of every occupant of a mobile home park to give the owner thereof or his/her agent or employee access to any part of such mobile home park at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this Ordinance.

F. Whenever, upon inspection of any mobile home park, the Permit Issuing Authority finds that conditions or practices exist which are in violation of any provision of this Ordinance, the Permit Issuing Authority shall give notice in writing to the mobile home park management that conditions or practices shall be corrected within a thirty (30) day period of time specified in the notice of the Permit Issuing Authority. At the end of such period, the Permit Issuing Authority shall reinspect such mobile home park and, if such conditions or practices have not been corrected, the mobile home park management shall be deemed to be in violation of this Ordinance.

A. Whenever the Permit Issuing Authority determines that there are reasonable grounds to believe that there has been a violation of any provision of this Ordinance, the Permit Building Authority shall give notice of such alleged violation to the person to whom the permit was issued as hereinafter provided. Such notice shall:

1. be in writing;
2. include a statement of the reasons for its issuance; and
3. allow thirty (30) days time for the performance of any act if required. If work cannot be completed within that period, extensions may be granted if reasons for hardship do prevail and can be verified; and
4. be served upon the owner or his/her agent as the case may require, provided that such notice or order be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his/her last known address, or when he/she has been served with such notice by any method authorized or required by the laws of this State.

B. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this Ordinance may request and shall be granted a hearing on the matter before the Council, provided that such person shall file in the Office of the City Clerk a written petition requesting such hearing and setting forth a brief statement of the grounds therefore within ten (10) days after the day the notice was served. Upon receipt of such petition, the Council shall set a time and place for such hearing and shall give the petitioners written notice thereof. At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn.

C. Whenever a Permit Issuing Authority finds that an emergency exists which requires immediate action to protect the public health, he may, without notice of hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he may deemed necessary to meet the emergency, including the suspension of the permit. Notwithstanding any other provision of this Ordinance, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon petition to the Permit Issuing Authority shall be afforded a hearing as soon as possible. The provisions shall be applicable to such hearing and the order issued thereafter.

D. Every operator of a mobile home park shall give notice in writing to the Permit Issuing Authority within seventy-two (72) hours after having sold, transferred, given away or otherwise disposed of interest in or control of any mobile home park. Such notice shall be made to
the Permit Issuing Authority to include the name and address of the person succeeding to the ownership or control of such mobile home park.

7. Grandfather Clause.

The provisions of this Section shall apply to all new mobile/manufactured home parks, including portions of existing parks not currently platted.

Existing mobile home parks at the date of adoption of this Ordinance shall submit a current site plan within thirty (30) days and shall in no case make changes which would reduce lot sizes or setbacks.

Subd. n. Recreation Vehicles, Boats, Campers and Equipment

1. Location.

   A. Recreation vehicles, boats, campers and equipment shall not be stored on any residential lot except in the rear yard or garage.

   B. Recreation vehicles or campers shall not be occupied for more than ten (10) days on residential lots, and no business shall be practiced in the recreation vehicle or camper.

2. Public Property.

Recreation trailers, boats, campers, or associated equipment shall not be allowed on any public property overnight except in those public areas specifically designated for overnight stops or enroute stops. Parking of above defined units in authorized areas shall not exceed ten (10) consecutive days or nights.

Subd. o. Apartments, Townhouses, and Other Multi-Family Structures

1. All multi-family structures allowed in the R-3 District shall be subject to the following standards:

   All requests for Building Permits or Conditional Use Permit shall be accompanied by site plans and data showing:

   A. Building locations and dimensions, all sign structures, entry areas, storage sites and other structural improvements to the site.

   B. Circulation plans for both pedestrian and vehicular traffic.

   C. Fences and screening devices.

   D. Solid waste disposal provisions and facilities.

   E. Storm drainage plans.

   F. Firefighting and other public safety facilities and provisions such as hydrant locations and fire lanes.

   G. Data pertaining to numbers of dwelling units, size, lot area, ratios, etc.

   H. Exterior wall materials and design information.

2. Parking Requirements.
A. Two (2) parking spaces per unit shall be provided on the same site as the dwelling unit. Each space shall not be less than nine (9) feet wide and twenty (20) feet in length, and each space shall be served adequately with access drives.

B. Parking spaces shall not be located within ten (10) feet of the side or rear lot line.

C. Bituminous or concrete driveways and parking areas with concrete curbing shall be required.


A. The design shall make use of all land contained in the site. All of the site shall be related to the circulation, recreation, screening, building, storage, landscaping, etc., so that no portion of the site remains undeveloped.

B. A minimum of ten percent (10%) of the site shall be landscaped.

4. Screening.

A. Screening to a height of at least five (5) feet shall be required where:
   
   (1) any off street parking area contains more than six (6) parking spaces and is within thirty (30) feet of an adjoining residential zone; and

   (2) where the driveway to a parking area of more than six (6) parking spaces is within fifteen (15) feet of an adjoining residential zone.

B. All exterior storage shall be screened. The exterior storage screening required shall consist of a solid fence or wall not less than five (5) feet high, but shall not extend within fifteen (15) feet of any street driveway or lot line.

C. Sidewalks shall be provided from parking areas, loading zones and recreation areas to the entrances of the building.

D. Outdoor swimming pools or other extensive recreation shall observe setbacks required for the principal structure. Swimming pools capable of holding a depth of three (3) feet or more of water shall be fenced with a minimum four (4) foot high fence.

5. General Building or Structural Requirements.

A. All accessory or ancillary buildings, including garages shall be designed and constructed of same or similar finish as the principal building.

B. Each multiple family dwelling development containing more than four (4) dwelling units shall include an outdoor recreational or play area.
C. Any blighting or deteriorating aspects of the multiple family dwelling development shall be placed or absorbed by the site itself, rather than by neighboring residential uses. This provision particularly applies to the location of parking areas.

D. The design shall make use of all land contained within the site. All of the site shall be related to the multiple family use, either by parking, circulation, recreation, landscaping, screening, building, storage, etc.

E. Trash and garbage. Enclosed garbage storage shall be required for more than four (4) units consisting of a solid fence or wall.

Subd. p. Parking

1. Location.

All accessory off street parking facilities required herein shall be located as follows:

A. Spaces accessory to one (1) and two (2) family dwellings shall be located on the same lot as the principal use served.

B. Spaces accessory to multiple family dwellings shall be located on the same lot as the principal use or within two hundred (200) feet of the main entrance to the principal building served.

C. No off street parking area containing more than four (4) parking spaces shall be located closer than five (5) feet from an adjacent lot zoned or used for residential purposes.

2. General Provisions.

A. Access Drives.

Access Drives may be placed adjacent to property lines except that drives consisting of crushed rock or other non-finished surfacing shall be no closer than five (5) feet to any side or rear lot line.

B. Control of Off Site Parking Facilities.

When required accessory off street parking facilities are provided elsewhere than on the lot in which the principal use served is located, they shall be in the same ownership or control, either by deed or long term lease, as the property occupied by such principal use. The owner of the principal use shall file a recordable document with the City Council requiring the owner and his/her heirs and assigns to maintain the required number of off street parking spaces during the existence of said principal use.

C. Use of Parking Areas.

Required off street parking space in any district shall not be utilized for open storage of goods or for the storage of vehicles which are inoperable or for sale or rent.
D. Parking shall not be allowed in areas that are not designed for off street parking.

3. Design and Maintenance of Off Street Parking Area.

A. Parking areas shall be designed so as to provide adequate access to a public alley or street. Such driveway access shall not exceed thirty (30) feet in width and shall be so located as to cause the least interference with traffic movement.

B. Curbing and Landscaping.

All open off street parking areas designed to have head-in parking along the property lines shall provide a bumper curb no less than five (5) feet from the side property line or a guard of normal bumper height not less than three (3) feet from the side property line. When said area is for six (6) spaces or more, a curb or fence not over six (6) feet in height shall be erected along the front yard setback line and grass or plantings shall occupy the space between the sidewalk and curb or fence.

C. Parking Space for Six (6) or More Cars.

When a required off street parking space for six (6) cars or more is located adjacent to a residential district, a screen shall be erected along the residential district property line to a height of at least five (5) feet.

D. Maintenance of Off Street Parking Space.

It shall be the joint and several responsibility of the operator and owner of the principal use, uses and/or building to maintain in a neat and adequate manner, the parking space, accessways, landscaping and required fences.

E. Determination of Areas.

A parking space shall not be less than three hundred (300) square feet per vehicle of standing and maneuvering area.

4. Off Street Parking Space Requirements.

<table>
<thead>
<tr>
<th>USE</th>
<th>SPACES REQUIRED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single and Two Family Dwellings</td>
<td>2 per dwelling unit.</td>
</tr>
<tr>
<td>Multiple Dwellings</td>
<td>2 per dwelling unit.</td>
</tr>
<tr>
<td>Business and Professional Offices</td>
<td>1 per 300 square feet of gross floor space.</td>
</tr>
<tr>
<td>Medical and Dental Clinics</td>
<td>2 per examining room plus 1 for each employee*</td>
</tr>
</tbody>
</table>
Hotel or Motel 1 per rental unit and 1 for each employee*, plus additional spaces as may be required for related uses such as restaurants and bars.

Restaurants, Cafes, Bars, Taverns and Nightclubs At least 1 for each 3 seats based on capacity plus 1 for each employee*.

Elementary and Junior High Schools 1 space for each employee*.

High Schools and Colleges At least 1 for each employee* plus 1 space for every 7 students.

Hospitals At least 1 for each 3 hospital beds, plus 1 for each employee*.

Bowling Alleys 6 for each alley and 1 for each employee* plus additional spaces as may be required for related uses such as a restaurant.

Automobile Service Stations 1 space for each employee* plus 4 off-street spaces for each service stall.

Retail Stores At least 1 off-street space for each 250 square feet of customer accessible retail floor area plus 1 for each employee*.

Undertaking Establishments 8 for each chapel or parlor plus 1 for each funeral vehicle maintained on the premises. Aisle space shall also be provided off the street for making up a funeral procession.

Industrial, Warehouse, Storage, Handling of Bulk Goods At least 1 for each employee* on maximum shift or 1 for each 2,000 square feet of gross floor area, whichever is larger.

Uses not specifically noted and Conditional Uses As determined by the City Council following review by the Planning and Zoning Commission.

*Full-Time or Equivalent Employee

For purposes of assessing the appropriate number of parking spaces to be provided, the City Council, Planning and Zoning Commission and applicant shall consider the following:

A. The average traffic demand generated by other similar users.
B. The availability of public parking in the area.

C. The anticipated ability of the site and/or building to accept intensive land use in the future.

D. The availability of on site expansion area which could accommodate additional future parking spaces without adversely affecting the compatibility of the use in the neighborhood.

E. The minimum parking standards as established by the Ordinance.

Where calculation in accordance with the foregoing list results in requiring a fractional space, any fraction less than one-half (1/2) shall be disregarded and any fraction of one-half (1/2) or more shall require one space.

5. Off Street Loading and Unloading Areas.

A. Location.

All required loading berths shall be off street and shall be located on the same lot as the building use to be served. A loading berth shall be located at least twenty-five (25) feet from the intersection of two (2) street rights of way and at least fifty (50) feet from a residential district unless within a building. Loading berths shall not occupy the required front yard space.

B. Size.

Unless otherwise specified in this Ordinance, a required loading berth shall not be less than twelve (12) feet in width, eighty (80) feet in length and fourteen (14) feet in height, exclusive of aisle and maneuvering space.

C. Access.

Each required loading berth shall be located with appropriate means of vehicular access to a street or public alley in a manner which will least interfere with traffic.

D. Surfacing.

All loading berths and accessways shall be improved with a durable material to control the dust and drainage.

E. Accessory Use.

Any space allocated as a loading berth or maneuvering area so as to comply with the terms of this Ordinance shall not be used for the storage of goods, inoperable vehicles or be included as a part of the space requirements necessary to meet the off street parking area.

F. Off Street Loading.

In connection with any structure which is to be erected or substantially altered, and which required the receipt or distribution of materials or
merchandise by trucks or similar vehicles, there shall be provided off street loading space.

G. Noise.

Where noise from loading or unloading activity is audible in a residential district, the activity shall terminate between the hours of 7:00 P.M. and 7:00 A.M.

6. Compliance.

Non-conforming uses existing on the effective date of this Ordinance are exempt from this provision.

Subd. q. Signs

1 Purpose and Intent:

It is not the purpose or intent of this Section to regulate the message displayed on any sign; nor is it the purpose or intent of this Section to regulate any building design or any display not defined as a sign, or any sign which cannot be viewed from outside a building. The purpose and intent of this Section is to:

A. Regulate the number, location, size, type, illumination and other physical characteristics of signs within the City in order to promote the public health, safety and welfare;

B. Maintain, enhance and improve the aesthetic environment of the City by preventing visual clutter that is harmful to the appearance of the community;

C. Improve the visual appearance of the City while providing for effective means of communication, consistent with constitutional guarantees and the City’s goals of public safety and aesthetics;

D. Provide for fair and consistent enforcement of the sign regulations set forth herein under the zoning authority of the City; and

E. Provide for the safety of the traveling public by limiting distractions, hazards and obstructions.

2. Definitions. The following words, terms and phrases, when used in this Section, will have the following meaning:

A. Alteration – Any structural change, excluding routine maintenance or changing the text of an existing sign.

B. Billboard – A sign on which lettered, figured or pictorial matter is displayed that has a display surface area of 250 square feet or more.
C. Building Sign – A sign attached to the outside of a building wall, roof, canopy or awning.

D. Dynamic Display – Any characteristic of a sign that appears to have movement or that appears to change, caused by any other method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display, the sign structure itself, or any other component of the sign. This includes a display that incorporates a technology or method allowing the sign face to change the image without having to physically or mechanically replace the sign face or its components. This also includes any rotating, revolving, moving, flashing, blinking or animated display or structural element and any display that incorporates rotating panels, LED lights, manipulated through digital input, “digital ink” or any other method of technology that allows the sign face to present a series of images or displays.

E. Display Surface Area: The entire area within a single, continuous perimeter enclosing the extreme limits of the actual sign surface. It does not include any structural elements outside the limits of such sign and not forming an integral part of the display. Only one side of a double-faced or V-type sign structure will be used in computing total display surface area. If the angle between the display surfaces of such a sign exceeds 10 degrees, the total area of both display surfaces shall be added together to compute the total display surface area.

F. Double-faced signs – A freestanding sign or structure that has two display surfaces that are designed to be seen from different directions, are located on the same structure, and the angle between the display surfaces does not exceed 10 degrees. If the angle of the display surfaces exceeds 10 degrees, the total display surface area of both surfaces shall be added together and shall not exceed the maximum allowable display surface area permitted for that zoning district.

G. Freestanding Sign – A sign supported by one or more upright poles, columns, or braces, placed in or on the ground and not attached to any building or structure.

H. Monument Sign – Any freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and solid from the grade to the top of the sign structure and is typically encased or supported by masonry materials.

I. Off-premise Sign – A commercial speech sign which directs the attention of the public to a business not on the same lot or site where such a sign is located.
J. Portable Sign - A non-permanent sign that is not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; balloons used as messages; umbrellas with messages; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicles are used in the normal day-to-day operations of the business. This definition does not include those signs defined in this section as sandwich board signs.

K. Projecting Sign – A sign that projects from the wall of a face of a building or structure, including an awning, canopy or marquee.

L. Roof Sign – A sign erected upon the roof of a structure to which it is affixed or a sign painted on the roof of a structure.

M. Sandwich Board Sign - A freestanding temporary sign, with no moving parts or flashing lights, no larger than eight square feet total display surface area per side (no taller than four feet from grade); displayed outside an establishment during business hours. It is not intended to constitute permanent business signage.

N. Sign - Any letter, word or symbol, poster, picture, statuary, reading matter or representation in the nature of advertisement, announcement, message, or visual communication, whether painted, posted, printed, affixed or constructed, including all associated brackets, braces, supports, wires and structures, which is displayed for informational or communicative purposes.

O. Temporary or Portable Sign – A non-permanent sign erected, affixed, or maintained on-premise for a limited period of time.

P. Window Sign – A sign attached to, placed upon or painted on the interior of a window that is visible from the exterior of the building, including signs that are placed on the backs of shelving units or similar structures, or interior walls where the sign is located less than seven feet from the window’s surface.

3. Permits and Fees. Sign Permit Required. Except otherwise stated herein, no sign shall be erected, constructed, altered, rebuilt or relocated until a permit has been issued by the City.

A. General information.

1. All signs requiring a permit will be required to pay an application
fee as specified by the City’s fee schedule.

2. In addition to a sign permit, an electrical permit must be obtained for illuminated signs or signs that have dynamic displays.

3. Except as otherwise stated herein, a permit will be valid for the life of the sign.

B. Application. Application for a sign permit must be made on the forms provided by the City, filed with the City and must include the following information:

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

2. The name, address, and telephone number of the person or entity erecting the sign, if not the applicant, or the name of the person on whose property the sign is to be located, if not the applicant’s;

3. Letter from owner of property where the sign is to be located giving the owner’s written permission to have the sign erected on the owner’s property;

4. A site plan drawn to scale showing the location of lot lines, all existing and proposed structures, parking areas, existing and proposed signs and any other physical features;

5. A detailed dimensional drawing of the proposed sign including height, description of the sign structure, materials to be used, including colors and method of attachment to the building, if applicable;

6. Payment in full of the required application fee, as set by the City’s fee schedule;

7. Copies of stress sheets and calculations indicating that the sign is properly designed for dead load and wind pressure in any direction;

8. A statement as to whether or not the sign will be illuminated or if the sign will contain any type of dynamic display;

9. A statement as to whether the sign will be single-faced, double-faceted or multi-faced; and

10. Such other information as the City may require to show compliance with this Section and all other applicable laws,
ordinances and regulations.

C. Inspections. A sign requiring a permit shall be subject to an initial inspection by the City to determine whether the sign conforms to the provisions of this Section, the permit application and other applicable laws, ordinances and regulations, including, but not limited to the sign’s location, size, footings, structural design and materials used.

D. Permit Issuance. Upon the filing of a complete permit application, the City shall review the application materials submitted. If the proposed sign complies with this section and other applicable laws, ordinances and regulations, the City shall issue a permit for the sign.

4. Prohibited Signs. The following types of signs are prohibited within the City:

A. Signs within the public right-of-way or publicly owned land that are not posted by authorized government officials or otherwise permitted by this Section;

B. Signs painted, attached, or in any manner affixed to trees, rocks, or similar natural surfaces, or attached to public utility poles, bridges or similar public structures, not including public water storage facilities or towers;

C. Roof signs; and

D. Billboards.

5. Portable, Temporary, Sandwich Board and Window Signs.

A. Portable or temporary signs are allowed by permit only in the industrial and commercial zoning districts. No permit will be issued by the City for a portable or temporary sign on a lot for a duration of more than 45 days within a calendar year.

1. There shall be no more than one portable or temporary sign on any lot at a time.

2. The sign shall not exceed 32 square feet in total display surface area and have a maximum of two sides.

3. Signs must be removed immediately after the event advertised has passed.

4. Signs shall not be placed in the public right-of-way, be flashing, have moving parts or be fastened to any pylon or light pole.
B. Sandwich board signs shall be allowed by permit only in all zoning districts within the City except in agricultural and residential districts.

1. All sandwich board signs require a sign permit which must be obtained prior to placement of the sign. Sandwich board sign permits are valid from the date of issuance until December 31st of each year. Sandwich board sign permits shall not be transferable. A copy of the approved sign permit for the sandwich board sign shall be attached to the sign at all times. Sandwich boards signs that do not comply with this requirement may be removed and disposed of by the City.

2. Only one sandwich board sign is allowed for each entity.

3. Sandwich board signs must not exceed eight square feet in display surface area per side.

4. Sandwich board signs may be placed on a public sidewalk or within the public right-of-way provided that the sign owner agrees to indemnify the City with respect to the sign and signs a waiver to this effect. Upon application for a sign permit, the sign owner must provide the City with a certificate of insurance that covers the City property in which the sign will be placed and the value of sign. The City must be named as an “additional insured” on the certificate of insurance. If placed on a sidewalk, a sandwich board sign shall not take up more than two feet of sidewalk width and shall not be placed in the middle of the sidewalk.

5. Sandwich board signs may be removed by the City if they interfere with any City activities, including, but not limited to, snow removal or maintenance of the surrounding area. No sandwich board sign shall be displayed overnight or when there has been any snow accumulation. Sandwich board signs that do not comply with this requirement may be removed and disposed of by the City.

6. Sandwich board signs shall be displayed only during the times that the entity is open.

7. Sandwich board signs must either be weighted down or removed when there are wind gusts of 20 m.p.h. or greater.

8. Under no circumstances shall a sandwich board sign be used instead of permanent building signage.
6. Exemptions. The following signs do not require a permit. These exemptions, however, shall not be construed as relieving the owner of the sign from the responsibility of its compliance with the provisions of this Section or any other law or ordinance regulating the same.

A. Signs within the public right-of-way or publicly owned land that are posted by authorized government officials.

B. Signs located within a business, office, mall or other enclosed area that cannot be seen from the outside.

C. Signs permitted by Minn. Stat. § 211B.045.

D. Up to three flags containing non-commercial speech only may be displayed upon a lot. Each non-commercial speech flag must not exceed 100 square feet in size in display surface area.

E. Handicapped parking signs.

F. One sign with a commercial message on a residentially zoned property that does not exceed six square feet per display surface area may be placed in the front yard of the property. One sign with a commercial message on a commercially or industrially zoned property that does not exceed 32 square feet per display surface area may be placed in the front yard of the property. This sign must be removed within 10 days after the closing date of the sale or lease of the property.

G. One sign with a commercial message that does not exceed 240 square feet of surface per display surface area (with a maximum of two sides) may be placed upon a construction site. This sign must be removed within 10 days after the closing date of the sale of the last lot owned by the development company.

H. One sign smaller than five square feet in display surface area may be posted on any parcel of land, except that such sign may not be an off-premises sign and may not be illuminated or contain any dynamic displays.

I. Window Signs are permitted in street facing windows of commercial and industrial zoned buildings provided they do not exceed 25 percent of the window area that has street frontage.

7. Conditions Applying to Signs in all Zoning Districts.

A. No sign shall be erected which will obstruct a driver’s view of
pedestrian, bicyclist, equestrian, or motor vehicle traffic.

B. No sign shall be erected which by reason of position, shape or color, would detract from or otherwise interfere with the proper functioning of a traffic-control sign or signal.

C. No sign shall be erected that resembles any official marker erected by a governmental agency except signs posted by authorized government officials.

D. No sign shall be permitted to obstruct any window, door, fire escape, stairway, or opening intended to provide light, air, ingress or egress for any building.

E. The minimum clearance of any sign from unprotected electrical conductors shall be not less than 36 inches for conductors carrying not over 600 volts and 48 inches for conductors carrying more than 600 volts.

F. No sign shall project higher than 40 feet above the grade at the place where the sign is located, if freestanding, or above the height of the building to which it is attached.

G. No sign shall be erected or maintained on private property without written permission from the owner.

H. No freestanding or monument signs erected on private property shall encroach onto public property.

I. Where a sign is illuminated, the source of light shall not be directed upon any part of a residence or into any residential district and the light source must also be shielded. All signs installed after the effective date of this Section that will have illumination by means other than natural light must be equipped with a mechanism that automatically adjusts the brightness in response to ambient conditions. These signs must also be equipped with a means to immediately turn off the display or lighting if it malfunctions, and the sign owner or operator must immediately turn off the sign or lighting when notified by the City that it is not complying with the standards of this Section.

J. All signs shall incorporate materials and colors which are compatible with the building upon which the sign is located. “Compatible” means materials which are consistent with the principal architectural features and colors of the building(s) being identified. All signs must be of good quality, and must be designed to include attractive and tasteful colors and design elements. The layout of the sign must give the sign
a neat and orderly appearance.

K. Any sign alteration will require an amended sign permit.

L. The owner of any sign which is otherwise allowed by this section may substitute non-commercial copy in lieu of any other commercial or non-commercial copy. This substitution of copy may be made without any additional approval or permitting by the City. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial message over any other non-commercial message. This provision prevails over any other more specific provision to the contrary.

8. Construction Standards.

A. Generally. The supports for all signs or sign structures shall be placed in or upon private property and shall be securely built, constructed and erected in conformance with the requirements of this Section and all other applicable laws, ordinances and regulations.

B. Materials. Materials for construction of signs and sign structures shall be of the quality and grade as specified for buildings in the State Building Code.

C. Signs Requiring Electricity.

1. Signs requiring electricity shall meet the requirements specified by the National Electric Code, as adopted and amended by the City.

2. The enclosed shell of signs requiring electricity must be watertight, excepting that service holes fitted with covers must be provided into each compartment of such signs.

3. Every sign requiring electricity must identify the name of the sign erecter and date of erection. The information must be located on the sign or sign structure, must be readable from the ground, and must be of a durable material sufficient to reasonably withstand the elements.

4. Electrical service to the sign must be underground.

D. Dynamic Displays. Dynamic displays on signs are allowed subject to the following conditions:
1. Dynamic displays may occupy no more than 35 percent of the actual copy and graphic area of the sign. The remainder of the sign must not have the capability to have a dynamic display even if it is not being used. Only one contiguous dynamic display area is allowed on a sign face.

2. Dynamic displays must be designed and equipped to freeze the device in one position if a malfunction occurs. The display must also be equipped with a means to immediately discontinue the display if it malfunctions and the sign owner must immediately stop the dynamic display when notified by the city that it is not complying with the standards of this Section.

3. Dynamic displays existing on the effective date of this Section must comply with the operational standards listed above. An existing dynamic display that does not meet the structural requirements as stated above may continue as a non-conforming sign subject to Sec. 5.6.06. q. 13.

E. Maintenance and Repair. All signs shall be maintained in good state of repair and free from rust, corrosion, loose or flaking paint, worn or damaged materials, rotted wooden members and loose or missing parts. Signs shall not remain in a defaced state. A sign or sign structure that is not being maintained or is unsafe as determined by the City Administrator shall be repaired or removed by the owner of the property or building on which it is erected upon receiving notification by the City.

9. Signs in the A-1 Agricultural District.

A. One building sign for each dwelling unit is permitted. Such sign shall not exceed one square foot in display surface area. No sign shall have more than two sides. A sign permit is not required.

B. One building sign for each dwelling group of six or more dwelling units is also permitted. Such sign shall not exceed six square feet in display surface area. No sign shall have more than two sides. A sign permit is not required.

C. Non-residential uses of residential property as provided in the Zoning Ordinance and multi-family dwelling groups of six or more units are allowed one freestanding or monument sign not more than 32 square feet in display surface area per side. The sign must be set back at least 10 feet from all property lines and the right-of-way. Dynamic displays are not permitted. A sign permit is required.
D. One building sign for each permitted nonresidential use or use by conditional use permit. Such sign shall not exceed 12 square feet in display surface area. No sign shall have more than two sides. A sign permit is required.

E. Symbols, statues, sculptures and integrated architectural features on buildings are permitted. These items may be illuminated, but must meet any applicable glare standards. A sign permit is not required.

F. Any sign in the agricultural district shall be set back at least 10 feet from any property line. No sign shall exceed 10 feet in height above the average grade level.

G. Signs may be illuminated, but must meet any applicable glare standards. Dynamic displays are not permitted.

10. Signs in R-1, R-2, R-3 and R-4 Residential Districts.

A. One building sign for each dwelling unit is permitted. Such sign shall not exceed one square foot in display surface area. No sign shall have more than two sides. A sign permit is not required.

B. One building sign for each dwelling group of three or more dwelling units is permitted. Such sign shall not exceed three square feet in display surface area. No sign shall have more than two sides. A sign permit is not required.

C. Multi-family dwelling groups of six or more units are allowed one freestanding or monument sign not more than 32 square feet in display surface area per side. The sign must be set back at least 10 feet from all property lines and the right-of-way. Dynamic displays are not permitted. A sign permit is required.

D. One building sign for each permitted nonresidential use or use by conditional use permit is permitted. Such sign shall not exceed 12 square feet in display surface area. No sign shall have more than two sides. A sign permit is required.

E. Symbols, statues, sculptures and integrated architectural features on buildings are permitted. These items may be illuminated, but must meet any applicable glare standards. A sign permit is not required.

F. Any sign in these zoning districts shall be set back at least 10 feet from any property line. No sign shall exceed 10 feet in height above the average grade level.
G. Signs may be illuminated, but must meet any applicable glare standards. Dynamic displays are not permitted.


A. For an individual lot or site with all buildings totaling a gross floor area of greater than 50,000 square feet, the following signage is permitted:

1. Freestanding and Monument Signs. The maximum freestanding or monument sign display surface area shall be limited to 250 square feet per public street frontage of the lot or site. This maximum display surface area applies to one sign surface of no more than two sides per sign structure. The allotted maximum surface area per public street frontage for the lot or site may be distributed among multiple freestanding or monument signs. In no case shall any one freestanding or monument sign’s display surface area exceed 250 square feet per side. Freestanding and monument signs shall not exceed a height of 40 feet from the average grade. No part of a freestanding or monument sign shall extend beyond the property line. In cases where an easement encumbers an area along the property line, the sign must be set outside of the easement area, even if the easement area exceeds ten feet from the property line. Dynamic displays are permitted. Sign permits are required.

2. Building Signs. The maximum building sign display surface area shall be limited to 15 percent of the building face. No building sign shall extend in height more than six feet above the highest outside wall or parapet of any principal building. Building signs must be placed on the principal building. Dynamic displays are not permitted. Sign permits are required.

3. Projecting Signs. The maximum projecting sign display surface area shall not exceed the sum of 16 square feet per side. All projecting signs must be located at a height of at least eight feet above the top of the curb elevation of the street. Projecting signs may project out up to five feet from the building face, provided that they do not create a hazardous condition in the public right-of-way. Dynamic displays are not permitted. Sign permits are required.

C. For an individual lot or site with all buildings totaling a gross floor area of less than 50,000 square feet, the following signage is permitted:
1. Freestanding and Monument Signs. The maximum freestanding and monument sign display surface area shall be limited to 150 square feet per public street frontage of the lot or site. This maximum display surface area applies to one sign surface of no more than two sides per sign structure. The allotted maximum display surface area per public street frontage for the lot or site may be distributed among multiple freestanding or monument signs. In no case shall any one freestanding or monument sign’s display surface area exceed 150—square feet per side. Freestanding and monument signs shall not exceed a height of 40 feet from the average grade. No part of a freestanding or monument sign shall extend beyond the property line. In cases where an easement encumbers an area along the property line, the sign must be set outside of the easement area, even if the easement area exceeds 10 feet from the property line. Dynamic displays are permitted. Sign permits are required.

2. Building Signs. The maximum building sign display surface area shall be limited to 15 percent of the building face. No building sign shall extend in height more than six feet above the highest outside wall or parapet of any principal building. Building signs must be placed on the principal building. Dynamic displays are not permitted. Sign permits are required.

3. Projecting Signs. The maximum projecting sign display surface area shall not exceed the sum of 16 square feet per side. All projecting signs must be located at a height of at least eight feet above the top of the curb elevation of the street. Projecting signs may project out up to five feet from the building face, provided that they do not infringe on the public right-of-way. Dynamic displays are not permitted. Sign permits are required.

D. When placing signs on the corner of a lot at the intersection of two public streets, the applicant shall designate which public street frontage for the lot or site that the total sign display surface area should be attributed to and in no case shall the display surface area be allowed to be divided between the frontages.

E. All signs within a lot or site shall be spaced no closer than 100 feet apart as measured along the public street frontage(s).

F. Signs may be illuminated but must meet the applicable glare standards. Internally illuminated freestanding and monument signs, including dynamic displays must be a minimum distance of 100 feet from the leading edge of said sign to an adjoining residential district.
boundary. This provision shall not apply to externally illuminated signs which otherwise comply with applicable glare standards.


A. One freestanding or monument sign per lot for single street frontage lots. In cases where lots have more than one street frontage, such lot shall be allowed up to two freestanding or monument signs which must each be placed on different frontages. The total square footage of freestanding or monument signs on a lot shall not exceed the sum of one square foot for each front foot of lot, or 250 square feet per surface, whichever is smaller. A freestanding or monument sign shall be set back at least 10 feet from any property line. Maximum height is 40 feet from average grade. Dynamic displays are permitted. Sign permits are required.

B. Building sign area is limited to 15 percent of the building’s face. No building sign shall extend in height more than six feet above the highest outside wall or parapet of any principal building. Building signs shall only be placed on the principal building. Dynamic displays are not permitted. Sign permits are required.

C. Signs may be illuminated but must meet the applicable glare standards. Internally illuminated freestanding and monument signs, including dynamic displays must be a minimum distance of 100 feet from the leading edge of said sign to an adjoining residential district boundary. This provision shall not apply to externally illuminated signs which otherwise comply with applicable glare standards.


Any sign legally existing at the time of the passage of this section that does not conform to the provisions of this section shall be considered a legal nonconforming sign and may be continued through repair, replacement, restoration, maintenance or improvement but not including expansion. “Expansion” shall be defined as any structural alteration, change or addition that is made outside of the original sign structure, display surface area or design. Nothing in this section shall prevent the return of a sign structure that has been declared unsafe by the City’s Building Inspector to a safe condition. When any legal nonconforming sign is discontinued for a period of more than one year or is changed to a conforming sign, any future sign shall be in conformity with the provisions of this section. Any legal nonconforming sign shall be removed and shall not be repaired, replaced, or rebuilt if it is damaged by fire or similar peril to the extent of greater than 50 percent of its market value at the time of destruction and no sign permit or building permit
has been applied for within 180 days of the date of destruction. The City’s Building Inspector shall be responsible for making the determination of whether a nonconforming sign has been destroyed greater than 50 percent at the time of destruction. In making the determination, the Building Inspector shall consider the market value of the entire sign at the time prior to the destruction and the replacement value of the existing sign. In the event that a building permit or sign permit is applied for within 180 days of the date of destruction, the City may impose reasonable conditions upon the building permit in order to mitigate any newly created impact on adjacent properties.


Where the City finds that extraordinary hardships or practical difficulties may result from strict compliance with this section, other than the procedural provisions and the purposes of this section may be served to a greater extent by an alternative proposal, the Board of Adjustments and Appeals may approve a variance, subject to the variance standards and requirements set forth in Sec. 5.6.04. f. of this Ordinance. An application for any such variance must be submitted to the City Administrator in writing at the time of submittal of the sign permit application. The application must fully state the grounds and all of the facts to justify the granting of the variance.

15. Enforcement.

A. Notice. Any person who violates any provision of this Section shall receive a notice of the violation by hand delivery or mail indicating that he or she must correct the violation within 30 days of the date of the notice.

B. Penalties. Any person convicted of violating this section shall be guilty of a misdemeanor and shall be subject to a fine or imprisonment as specified by State statute. Each day in which a violation continues to occur shall constitute a separate offense. Violation of any provision of this section shall also be grounds for revocation of the sign permit by the City.


An applicant whose sign permit has been denied or permittee whose sign permit has been revoked may appeal the decision to the Board of Adjustments and Appeals provided that he or she files written notice of the appeal with the City Administrator within 15 days of the date of the decision. Such appeal shall be considered by the Board of Adjustments and Appeals at its next regularly scheduled meeting held after the City’s receipt of the written notice of the appeal, provided that the notice of appeal is received by the City a minimum of 20 full business days before the meeting. The Board
of Adjustments and Appeals shall conduct an appeal hearing and allow the applicant and any of his/her witnesses to address the Board and to submit additional information. The Board of Adjustments and Appeals shall make its final determination on the appeal no more than 30 business days after the appeal hearing. The Board of Adjustments and Appeals shall notify the applicant of its decision and provide reasons for the decision.

17. Severability and Conflict.

This section and its parts are declared to be severable. If any section, subsection, clause, sentence, word, provision or portion of this section is declared invalid or unconstitutional by a court of competent jurisdiction, this decision shall not affect the validity of this section as a whole. All parts of this section not declared invalid or unconstitutional shall remain in full force and effect as if such portion so declared or adjudged unconstitutional or invalid was not originally part of this section, even if the surviving parts of the section result in greater restrictions after the unconstitutional or invalid provisions are stricken. If any part of this section is found to be in conflict with any other provision of this section or any other provision of the City Code or other applicable law or regulation, the most restrictive or highest standard shall prevail. If any part of this section is explicitly prohibited by Federal or State law, that part shall not be enforced.

Subd. r. Auto Service Station Standards.

1. Setbacks.

The building or buildings shall be set back at least thirty-five (35) feet from the street right of way. Near residential districts, the service station buildings, signs and pumps shall be a minimum of twenty five (25) feet from adjoining property. In commercial areas, the structures shall be set back at least ten (10) feet from adjoining property.

2. Fencing and Screening.

When adjacent to residential property, there shall be a six (6) foot screening. When adjacent to commercial property, there shall be a bumper-type screening fence eighteen (18) inches high between the station and the adjacent commercial property.

3. Vehicles.

No vehicles shall be parked on the premises other than those utilized by employees or awaiting service. No vehicle shall be parked or be waiting for service longer than fifteen (15) days.

4. Exterior Storage.

Exterior storage besides vehicles shall be limited to service equipment and items offered for sale. Exterior storage of items offered for sale shall be
within yard setback requirements and shall be located in containers such as
the racks, metal trays, and similar structures designed to display merchandise.

5. Screening.
All areas utilized for the storage or disposal of trash, debris, discarded parts,
and similar items shall be enclosed with a minimum six (6) foot high screen.
All structures and ground shall be maintained in an orderly, clean and safe
manner.

6. Outdoor Displays.
The storage of used tires, batteries, and other such items for sale outside the
building shall be controlled. Such items shall be displayed in specially
designed racks or containers and be limited to one (1) or two (2) areas five (5)
feet from the street right of way lines. Junk cars, empty cars and other
unsightly materials are not permitted in an area subject to public view.

7. Other Activities.
Business activities not listed in the definitions of auto service stations in this
Ordinance and not incidental to the business are not allowed on the premises
of an auto service station unless a Conditional Use Permit or license is
obtained specifically for such business. Such activities include, but are not
limited to the following:
   A. Automatic car and truck wash.
   B. Rental of vehicles, equipment or trailers.
   C. General retail sales.

Gas pumps located at and a part of other types of business establishments
shall require a Conditional Use Permit.

8. Compliance.
Non-conforming uses existing on the effective date of this Ordinance are
exempt from this provision.

Subd. s. Agricultural Operation.
All farms in existence upon the effective date of this Ordinance within the
City Limits shall be a permitted use where the operator may conduct a
farming operation. However, all regulations contained in these performance
standards shall apply to all changes of the farming operation which will cause
all or part of the area to become more intensively used or more urban in
character. The City Council may require any farm owner to secure a
Conditional Use Permit to expand or intensify said operations in the event of
the following:
   A. The farm is adjacent to, or within four hundred (400) feet of any
dwelling unit and may be detrimental to living conditions by creating
safety hazards or by emitting noise, odor, vibrations or similar
nuisances.
B. The farming operations are so intensive as to constitute an industrial type of use consisting of the compounding, processing, and packaging of products for wholesale or retail trade.

Subd. t. Home Occupations.

1. General Regulations.

Home occupations shall be allowed by a home occupation permit issued by the City Council if they meet the following conditions:

A. Such occupation is carried on in the principal dwelling. If such occupation is carried on other than in the principal dwelling, a Conditional Use Permit is required.

B. Not more than twenty-five percent (25%) of the gross floor area of the residence is used for this purpose.

C. Only articles made or originating on the premises shall be sold on the premises, unless such articles are incidental to a permitted commercial service.

D. Signs are subject to the standards in Sec. 5.6.06. q..

E. No articles for sale shall be displayed so as to be visible from any street.

F. No person is employed other than a member of the household residing on the premises.

G. No mechanical or electrical equipment is used if the operation of such equipment interferes unreasonably with the desired quiet residential environment of the neighborhood or if the health and safety of the residence is endangered.

H. Such occupation does not generate more than two (2) vehicles at one time.

I. Such occupation must provide two (2) off street parking spaces.

J. A person having a home occupation shall provide proof of meeting the above nine (9) requirements if complaints are received by the City Council.

2. Retail Sales.

Home occupations allowing retail sales or employment of persons other than the members of the household residing on the premises may be permitted by Conditional Use Permit if the following conditions are met:

A. Such occupation is carried on in the principal dwelling. If such occupation is carried on other than in the principal dwelling, a Conditional Use Permit is required.

B. Not more than twenty-five percent (25%) of the gross floor area of the residence is used for this purpose.
C. Signs are subject to the standards in Sec. 5.6.06. q.

D. No articles for sale shall be displayed so as to be visible from any street.

E. No mechanical or electrical equipment is used if the operation of such equipment interferes unreasonably with the desired quiet residential environment of the neighborhood or if the health and safety of the residence is endangered.

F. Such occupation does not generate more than two (2) vehicles at one time.

G. Such occupation must provide two (2) off street parking spaces.

3. Compliance.

   Non-conforming uses existing on the effective date of this Ordinance are exempt from this provision unless there is a change in the ownership of property.

4. The Zoning Administrator shall maintain a record of all Home Occupation Permits issued including information on the use, location, and such other information as may be appropriate.

   **Subd. u. Towers and Satellite Dish Antennas**

   Building permits shall be required for towers, antennas and dish antennas exceeding thirty-six (36) inches. All such towers, antennas and dish antennas shall meet the following regulations:

   1. Distance of any guy anchorage or similar device in residential districts shall be at least five (5) feet from any property line. In commercial districts, guy anchorage or similar devices may be placed on property line.

   2. Suitable protective anti-climb device shall be provided for all towers.

   3. In residential districts, antennas may be permitted to be constructed to a height no greater than forty-five (45) feet above the ground. In commercial districts the heights shall not be greater than sixty (60) feet.

   4. In residential districts, antennas, towers or dishes shall be located at least twenty-five (25) feet from the front property line, but at no time shall the antennas, tower or dishes extend beyond the front building line.

   5. Advertising messages shall not be allowed on any dish antennas located in a Residential District.

   6. An applicant for a Building Permit for those purposes shall present documentation of the possession of any required license by any Federal and State agency.

**Sec. 5.6.07. Enforcement**

   **Subd. a. Building Permit**
No building permit shall be issued for any construction, enlargement, alteration, demolition or moving of any building or structure on any lot or parcel until all requirements of these regulations have been fully met.

Sec. 5.6.08. Violations and Penalties

Subd. a. Penalties

Any firm, person or corporation who violates any of the provisions of this Zoning Ordinance shall be guilty of a misdemeanor, and upon conviction thereof be subject to a fine and/or imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense. All violations shall be considered a nuisance. The City may, through the issuance of an injunction, stop any violation of this Ordinance.

Sec. 5.6.09. Effective Date

This Zoning Ordinance shall become effective January 1, 2006.

SECTION 5.7 STAPLES BUILDING MAINTENANCE CODE.

Sec. 5.7.01. Purpose. The purpose of this Section is to protect, preserve, and promote the public health, safety, and the general welfare of the people of the City, to prevent exterior housing conditions that adversely affect or are likely to adversely affect the life, safety, general welfare, and health of persons occupying buildings within Staples, to provide an adequate level of maintenance; to preserve the value of land and buildings throughout the City; and to provide for the administration and enforcement thereof.

Sec. 5.7.02. Discrimination and Privacy. This Section shall be enforced in a non-discriminatory manner and exclusively for the purpose of promoting public, as opposed to private, welfare. Except as may be specifically provided herein or incidental to the enforcement hereof, this Section is not intended to interfere with personal privacy or with private legal rights and liabilities, including without limitation landlord/tenant and lessor/lessee relationships, and in enacting and enforcing this Section, the City neither expressly nor by implication assumes any obligations or liabilities respecting such private rights or disputes, including those which involve or arise out of the nonconformity of any premises in the City to the provisions of this Section.

Sec. 5.7.03. Applicability. Every building and its premises used in whole or in part as a residence or as an accessory structure thereof, whether for one or more persons, or families living in separate units, and every building and its premises used in whole or in part as a commercial building, or as an accessory structure thereof, shall conform to the requirements of this Section, irrespective of when such building may have been or may be constructed, altered, or repaired. This Section establishes minimum exterior standards for erected dwelling units, accessory structures, and related premises.
Sec. 5.7.04. Definitions.

The following words and terms are defined as follows:

**Accessory Building or Use** – A subordinate building or subordinate use that is located on the same premises on which the main building or use is situated and that is incidental to the conduct of the primary use of such building or main use.

**Building** – Any structure or part of a structure.

**Commercial Building** – Any building, or portion thereof, designed or used for commercial purposes as specified in Sec. 5.6.06 of the Staples City Code.

**Dwelling** – A building, or portion thereof, designed or used for residential occupancy, including one-family dwellings, two-family dwellings, and multiple-family dwellings, and a dwelling shall include a dwelling unit or rooming unit. Whenever the word “dwelling” is used in this Section, it shall be construed as though it was followed by the words “or any part thereof.” A dwelling shall include a manufactured home, regardless of whether the manufactured home is on a permanent foundation.

**Enforcement Officer** – The agent(s) designated by the Staples City Administrator to administer and enforce this Section.

**Garbage** – Putrescible animal and vegetable wastes, including those resulting from the handling, preparation, cooking and consumption of food.

**Nuisance** – For purposes of this Section, a nuisance shall be any of the following:

A. Any public nuisance known as common law or in equity jurisprudence, or recognized by Minnesota Statutes or local ordinance.

B. Any public nuisance that may prove detrimental to children whether in a building, on the premises of a building, or upon an unoccupied lot. This includes, but is not limited to, any abandoned wells, shafts, basements, or excavations; abandoned refrigerators in a hazardous condition; unlicensed or inoperable motor vehicle(s); or any structurally unsound fences or structures; or any lumber, garbage, rubbish, fences or debris that may become a hazard for inquisitive minors.

C. Inadequate or unsanitary exterior sewage or plumbing facilities.

D. Uncleanliness.

E. Any other activity or situation that is dangerous to human life or is detrimental to health.

**Owner** – Any person, firm, or corporation who, alone, jointly, or severally with others, shall be in actual possession of, or have charge, care, or control of, any dwellings, dwelling unit, or rooming unit within the City as owner, employee, or agent of the owner, or as trustee or guardian of the estate or person of the title holder. Any such person representing the actual
owner shall be bound to comply with the provisions of this Section to the same extent as the owner. Notwithstanding Minn. Stat. § 463.15, Subd. 4, an owner may be a person whose evidence of title is not recorded in the office of the County Recorder. A commercial building shall be included within the definition of this paragraph.

Paint, Blistered – Any surface area where paint is cracked, flaked, chipped or loose.

Person – Any individual, firm, partnership, association, corporation, or joint venture or organization of any kind.

Premises – Platted lot(s) or unplatted parcel(s) of land, or any portion thereof, either occupied or unoccupied by any dwelling or non-dwelling structure, including such building, accessory structure, or other structure thereon.

Refuse – All putrescible and non-putrescible waste solids including garbage and rubbish.

Retaining Wall – A wall or structure constructed of stone, concrete, wood, or other materials, used to retain soil, as a slope transition, or edge of a planting area.

Rodent Harborage – Any place where rodents are liable to live, nest, or seek shelter.

Rodent Proof – A condition where a structure or any part thereof is protected from rodent infestation by eliminating ingress and egress openings such as cracks in walls and holes in screens. For the purpose of this Section, the term “rodent proof” shall be construed as though it included “insect proof” and “vermin proof.”

Rubbish – Non-putrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, grass and shrubbery clippings, wood, glass, brick, plaster, bedding, crockery and similar materials.

Structure – Anything erected or placed on a lot in the City of Staples, whether platted or unplatted, and whether used for residential or commercial purposes. Whenever the word “structure” is used in this Section, it shall be construed as though it was followed by the words “or any part thereof.”

Use – The purpose or activity for which the land or building is designated, or intended, or for which it is occupied, utilized, or maintained, including the performance of such activity as defined by the performance standards of this Chapter.

Yard – All ground, lawn, court, walk, driveway or other open space constituting part of the same premises.

Sec. 5.7.05. Responsibility of Owners and Occupants.

Subd. a. Responsibilities of Owners.
The owner of a dwelling or commercial building shall be responsible for the maintenance of that structure and for meeting the provisions of this Code.

Subd. b. Joint Responsibilities of Occupants and Owners.

1. No owner, agent or occupant of any dwelling unit or commercial building shall allow the accumulation of dirt or filth on the premises that he/she occupies or controls in a manner that could create a health hazard to the dwelling or commercial building occupants or the general public.

2. Solid Waste: No owner, agent or occupant of any dwelling or commercial building shall allow the accumulation of rubbish or garbage on the premises that he/she occupies or controls in a manner that could create a health hazard to the dwelling or commercial building occupants or the general public.

3. Rodent Harborage in Occupied Areas: No owner, occupant or agent shall allow formation of rodent harborage in or about the premises that he/she occupies or controls.

4. Pest Extermination: Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of rodents, insects or vermin on the premises. Every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his/her dwelling unit is the only one infested. Notwithstanding, however, whenever infestation is caused by the failure of the owner to maintain a dwelling in a reasonable rodent proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner. All of the above also applies to commercial buildings.

5. Nuisances: No owner, agent or occupant of any dwelling unit or commercial building shall allow the formation or presence of any nuisance (as defined under Definition – Nuisance) in or about the premises he/she occupies or controls.

Sec. 5.7.06. Minimum Standards.

Subd. a. Minimum Exterior Standards.

1. Foundations, Exterior Walls, and Roofs: The foundation, exterior walls, and exterior roof shall be water tight, rodent proof, and shall be kept in sound condition and repair. Every window, exterior door, and hatchway shall be substantially tight and shall be kept in sound condition and repair. The foundation shall adequately support the building at all points. Exterior walls shall be maintained and kept free from dilapidation by cracks, tears, or breaks or from deteriorated plaster, stucco, brick, wood, or other material that is extensive and gives evidence of long neglect. The protective surface on exterior walls of a building above ground level shall be maintained in good repair so as to provide a sufficient covering and protection of the structural surface underneath against its
deterioration. Without limiting the generality of this Section, a protective surface of a building shall be deemed to be out of repair if:

A. The protective surface is paint that is blistered to an extent of more than twenty-five percent (25%) of the area of any plane or wall or other area including window trim, cornice members, porch railings and other such areas;

B. More than ten percent (10%) of the pointing of any chimney or twenty five percent (25%) of the pointing of any brick or stone wall is loose or has fallen out.

C. More than twenty five percent (25%) of the finish coat of stucco wall is worn through or chipped away.

Any exterior surface or plane required to be repaired under the provisions of this Section shall be repaired in its entirety. If a weather resistant surface such as brick, plaster or metal is covered with paint that is more than twenty five percent (25%) blistered, it shall be repainted unless the defective paint covering is removed in its entirety.

2. Accessory Structure Maintenance: Accessory structures supplied by the owner, agent, or tenant on the premises of a dwelling or commercial building shall be structurally sound, and be maintained in good repair and appearance. Exterior walls of accessory structures shall be maintained in accordance with the standards set forth for principal structures.

3. Fence Maintenance: Fences shall be maintained in good condition both in appearance and in structure. Wood material, other than decay resistance varieties, shall be protected against decay by use of paint or other preservatives. If twenty five percent (25%) more of the painted surface of the surface of a fence is determined by the Enforcement Officer to be paint blistered, the surface shall be properly scraped and repainted.

4. Retaining Walls: Retaining walls shall be kept in good condition, repair, and appearance. A retaining wall shall be deemed out of repair when it has substantially shifted or slumped out of its intended position.

5. Yard Cover: All exposed areas surrounding (or within) a principal or accessory use, including street boulevards that are not devoted to parking, drives, sidewalks, patios, or other such uses, shall be landscaped with grass, shrubs, trees or other ornamented landscape material. Such landscaping shall be maintained in good condition and free of noxious weeds. Grass and weeds may not exceed twelve (12) inches in height at any time.

6. Gutters and Downspouts: Existing gutters, leaders and downspouts shall be maintained in good working condition as to provide proper drainage of storm water. It no case shall storm water be channeled into the sanitary sewer system. Neither shall storm water, ice or snow be directed onto, or channeled across walkways or streets where it is likely to be a hazard to life or health.
Subd. b. Minimum Structural Standards.

1. Stairways, Porches, and Balconies: Every stairway, outside of a dwelling or commercial building and every porch or balcony, shall be kept in safe condition and sound repair. Every flight of stairs and every porch and balcony floor shall be free of deterioration. No flight of exterior stairs shall have settled out of its intended position or have pulled away from the supporting or adjacent structures enough to cause a hazard. No flight of exterior stairs shall have rotting, loose, or deteriorating supports.


1. Every dwelling or commercial building and accessory structure shall be maintained in a rodent proof condition. All openings in the exterior walls, foundations, basements, ground or first floors, and roofs shall be rodent proofed in a manner approved by the Enforcement Officer.

Sec. 5.7.07. Inspection and Enforcement.

Subd. a. Administration and Enforcement.

The Enforcement Officer and/or his/her designated agents shall administer and enforce the provisions of this Section and are hereby authorized to cause inspections of property when reason exists to believe that a violation of the Section exists, has been, or is being, committed.

Subd. b. Authority.

In the absence of a timely appeal under this Section or any other applicable provisions of law, the Enforcement Officer shall be the final authority in the determination of a violation under this Section.

Subd. c. Compliance Order.

Whenever the Enforcement Officer determines that any dwelling, dwelling unit, rooming unit, or commercial building, or the premises surrounding any of these, fails to meet the provisions of this Section, he/she may issue a Compliance Order setting forth the violations of the Section and ordering the owner, occupant, operator, or agent to correct such violation. This Compliance Order shall:

1. Be in writing;
2. Describe the location and nature of the violations of this Section;
3. Establish a time for the correction of such violations;
4. Include information regarding the owner’s rights to appeal the order and the procedure to be followed in filing such an appeal pursuant to Section 10;

5. Be served upon the owner or his/her agent or the occupant, as the case may require. Such notice shall be deemed to be properly served upon such owner or agent, or upon any such occupant, if a copy thereof is:
   a. Served upon him/her personally, or
   b. Deposited in the U.S. Post Office addressed to the owner at his/her last known address, certified mail, with postage prepaid, or
   c. Upon failure to effect notice by personal service or by mail, posted at a conspicuous place in or about the dwelling or commercial building that is affected by the notice.


1. Declaration: The exterior of any dwelling or commercial building, together with the premises upon which the dwelling or commercial building is situated, which is damaged, decayed, dilapidated, unsanitary, unsafe, vermin or rodent infested, to the extent that the defects create a hazard to the health, safety, or welfare of the occupants or of the general public, may be declared unfit for human habitation. Whenever any dwelling or commercial building, including the premises upon which the dwelling or commercial building is situated, has been declared unfit for human habitation, the Enforcement Officer shall order the dwelling or commercial building vacated within a reasonable time and shall post a placard on the dwelling or commercial building that shall:
   a. Be in writing;
   b. Include a description of the property sufficient for identification;
   c. Include a statement of a reason or reasons why it is being issued;
   d. Include a description of the repairs and improvements required to bring the dwelling or commercial building into compliance with the provisions of this Section, and
   e. Include a statement of time to correct the violation.

2. Vacated Building: It shall be unlawful for such dwelling or commercial building, including the premises upon which the dwelling or commercial building is located, to be used for human habitation until the defective conditions have been corrected and written approval has been issued by the Enforcement Officer. It shall be unlawful for any person to deface or remove the declaration placard from any such dwelling or commercial building, including the premises upon which the dwelling or commercial building is situated.

3. Secure Unfit and Vacated Dwellings or Commercial Buildings: The owner of any dwelling or commercial building, including the premises upon which the dwelling
or commercial building is situated, which has been declared unfit for human habitation, or which is otherwise vacant for a period of ten (10) days or more, shall make same safe and secure so that it is not hazardous to the health, safety and welfare of the public and does not constitute a public nuisance. Any vacant dwelling or commercial building open at doors or windows, if unguarded, shall be deemed a hazard to the health, safety, and welfare of the public and a public nuisance within the meaning of this Section, and may be secured by the City under the provisions of Minn. Stat. § 463.251.

4. Hazardous Building Declaration: In the event that a dwelling or commercial building has been declared unfit for human habitation, and the owner has not remedied the defects within a prescribed reasonable time, the dwelling or commercial building may be declared a hazardous building and treated consistent with the provisions of the Minnesota Statutes.

Subd. e. Execution of Compliance Orders by Public Authority.

Upon failure to comply with a compliance order within the time set therein and no appeal having been taken, the criminal penalty established hereunder notwithstanding, the City Council may by resolution direct the Enforcement Officer to remedy the deficiency (deficiencies) cited in the Compliance Order. The cost of such remedy shall be a lien against the subject real estate and may be levied and collected as an assessment in the manner provided by this Code and Minn. Stat. §§ 463.15 through 463.261, as amended. Such action will not be taken, however, without a good faith effort on the part of the City to provide the property owner with advance notice of its intention to proceed with the repairs and assessment of the costs of repairs to taxes.

Subd. f. Reinspection.

At the end of the period allowed for the correction of a violation specified in the Compliance Order, the Enforcement Officer shall reinspect the premises to determine whether those corrective actions have been sufficient to bring the violations into compliance. If the premises are in compliance with requirements of this Ordinance as of the time of the reinspection, the Enforcement Officer shall cause a Certificate of Health and Safety Compliance to be issued.

Subd. g. Reinspection – Non-Compliance.

If after the period allowed for compliance has elapsed, the Enforcement Officer determines on the basis of a reinspection that the violation has not been corrected, the Enforcement Officer may issue a citation or may file a formal complaint summoning the responsible party into court. The citations shall reiterate the charge and the Section(s) violated. The City may also take action to correct violations under the provisions of Sec. 5.7.07, Subd. e and/or Subd. 5.7.10.
Subd. h. No Warranty by City.

By enacting and undertaking to enforce this Section neither the City nor its council, agents or employers warrant or guarantee the safety, fitness or suitability of any dwelling or commercial building in the City.

Subd. i.

Notwithstanding any other provisions of this Section, any property on which there has been a tax judgment sale pursuant to Minnesota Statutes Chapter 280 shall be immediately subject to the inspection and enforcement provisions of this Section as soon as the property is redeemed by the delinquent tax owner through the Office of the County Auditor and State of Minnesota.

Sec. 5.7.08. Appeals.

Subd. a. Right of Appeal.

Any person aggrieved by a Compliance Order may appeal the Compliance Order to the City Council. Such appeals must be in writing, must specify the grounds for the appeal, and must be filed with the City Clerk within ten (10) business days after service of the compliance order. The filing of an appeal shall stay all proceedings in furtherance of the action appealed from, unless such a stay would cause imminent peril to life, health, property or public safety.

Subd. b. Board of Appeals Decision.

Upon at least five (5) business days notice to the appellant of the time and place for hearing the appeal, and within thirty (30) days after said appeal is filed, the City Council shall hold a hearing thereon, at which the applicant shall have the right to appear and present evidence as to why the Compliance Order, or any portion thereof, should not be issued. The City Council may reverse, modify or affirm, in whole or in part, the Compliance Order and shall order return of all or part of the filing fee if the appeal is upheld. It shall be at the City Council’s option to postpone a meeting and hold a hearing at a later date, not to exceed sixty (60) days after the appeal is filed, when it is necessary to do so.

Sec. 5.7.09. Penalties and Sanctions.

Any person who fails to comply with a compliance order within the time limits specified therein and any person who violates any of the provisions of this Section by doing any act or omitting to do any act that constitutes a breach of any section of this Section shall, upon conviction thereof, be guilty of a misdemeanor and subject to a fine or imprisonment as prescribed by State law. Each day of such failure to comply shall constitute a separate punishable offense.
Sec. 5.7.10. Further Remedies.

In addition to any other remedies or procedures specified in this Section, the City shall also be authorized as follows:

a. To order the owner of any hazardous building or property within the City to raze or remove the building;

b. To remove or raze any hazardous building or remove or correct any hazardous condition of real estate; and

c. To acquire any hazardous building, real estate on which buildings are located, or vacant or undeveloped real estate that are found to be hazardous, by eminent domain.

The provisions of Minn. Stat. §§ 463.15 through 463.261, as amended shall be followed with respect to the remedies contained in this Subd. 5.7.10, and, therefore, all provisions of Minn. Stat. §§ 463.15 through 463.261, as amended, are hereby adopted in full by reference and made a part of this Section and the Staples Maintenance Housing Code.

SECTION 5.8 CITY ADOPTION OF MINNESOTA STATE BUILDING CODE.

Sec. 5.8.01. Application, administration and enforcement.

The application, administration, and enforcement of the Code shall be in accordance with Minn. Rules part 1300.2100 and as modified by Chapter 1305. The Code shall be enforced within the extraterritorial limits permitted by Minn. Stat. § 16B.62 subdivision 1 when so established by this ordinance.

Sec. 5.8.02. Enforcement Agency.

The Code enforcement agency of this municipality is called the Staples City Council. A Minnesota certified Building Official must be appointed by this jurisdiction to administer the Code (Minn. Stat. § 16B.65).

Sec. 5.8.03. Permits and Fees.

The issuance of permits and the collection of fees shall be as authorized in Minn. Stat. § 16B.62, Subd. 1 and as provided for in Chapter 1 of the 1997 Uniform Building Code and Minn. Rules parts 1305.0106 and 1305.0107. Permit fees shall be assessed for work governed by this Code in accordance with fee resolutions adopted by the Staples City Council. In addition, a surcharge fee shall be collected on all permits issued for work governed by this Code in accordance with Minn. Stat. § 16B.70.

Sec. 5.8.04. Violations and Penalties.
A violation of the Code is a misdemeanor (Minn. Stat. § 16B.69).

Sec. 5.8.05. Building Code.

The Minnesota State Building Code, established pursuant to Minn. Stat. §§ 16B.59 to 16B.75 (including any amendments thereto passed from time to time) is hereby adopted as the building Code for this jurisdiction. The Code is hereby incorporated in this ordinance as if fully set out herein.

Subd. a. The Minnesota State Building Code (1998 version with several individually updated chapters) includes the following chapters of Minnesota Rules:

1. 1300 Code Administration
2. 1301 Building Official Certification
3. 1302 State Building Construction Approvals
4. 1305 Adoption of the 1997 Uniform Building Code including Appendix Chapters:
   a. 3, Division 1, Detention and Correctional Facilities
   b. 12, Division II, Sound Transmission Control
   c. 15, Reroofing
   d. 16, Division I, Snowload Design
   e. 29, Minimum Plumbing Fixtures
   f. 31, Division II, Membrane Structures
5. 1307 Elevators and Related Devices
6. 1315 Adoption of the 1999 National Electrical Code
7. 1325 Solar Energy Systems
8. 1330 Fallout Shelters
9. 1335 Floodproofing Regulations
10. 1341 Minnesota Accessibility Code
11. 1346 Adoption of the 1991 Uniform Mechanical Code
12. 1350 Manufactured Homes
13. 1360 Prefabricated Buildings
14. 1361 Industrialized/Modular Buildings
15. 1370 Storm Shelters (Manufactured Home Parks)
16. 4715 Minnesota Plumbing Code
17. Minnesota Energy Code 7672 (with option of chapter 7670), 7674, 7676 and 7678.

SECTION 5.9 PLANNING AND ZONING FEE SCHEDULE.

The City of Staples Does Hereby Ordain:

Planning & Zoning Fee Schedule – Effective January 5, 2006

    Conditional Use Permit Fee:                      $165.00  Residential
                                              192.50  Commercial
Variance Fee:  
165.00 Residential  
192.50 Commercial  

Zoning Amendment Fee:  
165.00 Residential  
192.50 Commercial  

Preliminary Plat Fee:  
165.00 plus 10.00/lot Residential  
192.50 plus 10.00/lot Commercial  

Minor Subdivision Plat Fee:  
82.50 plus 10.00/lot Residential  
82.50 plus 10.00/lot Commercial  

EAW or EIS or AUAR Review Fee:  
165.00 Residential  
192.50 Commercial  

Wetland Review Fee:  
50.00 Residential  
50.00 Commercial  

Grading Permit:  
100.00 R-3  
100.00 Commercial  

Shoreland Alteration Permit Fee:  
55.00 Residential  
55.00 Commercial  

Home Occupation Permit Fee:  
50.00  

SECTION 5.10 CITY SUBDIVISION ORDINANCE.

Subd. a. Statement of Purpose.

1. The process of dividing raw land into separate parcels for other uses including residential, industrial and commercial sites is one of the most important factors in the growth of any community. Once the land has been subdivided and the streets, homes and other structures have been constructed, the basic character of this permanent addition to the community has become firmly established. Therefore, it is in the best interests of the general public, the developer, and the future land owners that subdivisions be conceived, designed, and developed in accordance with the highest possible standards of excellence.

2. All subdivisions of land hereafter submitted for approval shall fully comply with the regulations set forth herein. It is the purpose of these regulations to:

   (1) Encourage well planned, efficient and attractive subdivisions by establishing adequate standards for design and construction.
(2) Provide for the health and safety and general welfare of residents by requiring the necessary services such as, but not limited to, properly designed streets and adequate sewage and water service.

(3) Place the cost of improvements against those benefiting from their construction.

(4) Secure the rights of the public with respect to public land and water.

(5) Improve land records by establishing standards for surveys and plats.

(6) Protect the environmentally sensitive areas in the City.

(7) Conserve energy by allowing solar and earth-sheltered structures.

Subd. b. Scope and Legal Authority.

1. The rules and regulations governing plats and subdivision of land contained herein shall apply within the City. Except in the case of re-subdivision, this Ordinance shall not apply to any lot or lots forming a part of a subdivision recorded in the Office of the Todd or Wadena County Recorder prior to the effective date of this Ordinance, nor is it intended by this Ordinance to repeal, annul or in any way impair or interfere with existing provisions of other laws or ordinances except those specifically repealed by, or in conflict with this Ordinance, or with restrictive covenants running with the land. Where this Ordinance imposes a greater restriction upon the land than is imposed or required by such existing provisions of law, ordinance, contract or deed, the provisions of this Ordinance shall apply.

2. The provisions of this Ordinance may be amended by the Staples City Council.

3. Should a court of competent jurisdiction declare any part of this Ordinance to be invalid, such decision shall not affect the validity of the remainder.

4. No conveyance of land in which the land conveyed is described by metes and bounds or by reference to an unapproved registered land survey or to an unapproved plat made after these regulations become effective, shall be made or recorded unless the parcel described in the conveyance:

   (1) was a separate parcel of record April 1, 1945 or the date of adoption of subdivision regulations under Laws 1945, Chapter 287, whichever is the later, or of the adoption of subdivision regulations pursuant to a home rule charter, or

   (2) was the subject of a written agreement to convey entered into prior to such time, or

   (3) was a separate parcel of not less than 2-1/2 acres in area and 150 feet in width on January 1, 1966, or

   (4) was a separate parcel of not less than five acres in area and 300 feet in width on July 1, 1980, or

   (5) is a single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its conveyance does not result
in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width, or
(6) is a single parcel of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area of 500 feet in width.

In any case in which compliance with the foregoing restrictions will create an unnecessary hardship and failure to comply does not interfere with the purpose of the subdivision regulations, the city may waive such compliance by adoption of a resolution to that effect and the conveyance may then be filed or recorded.

Any owner or agent of the owner of land who conveys a lot or parcel in violation of the provisions of this section shall be guilty of a misdemeanor, and in addition to such other penalties as may apply, shall forfeit and pay to the city a penalty of not less than $100 for each lot or parcel so conveyed.

A municipality may enjoin such conveyance or may recover such penalty by a civil action in any court of competent jurisdiction.

These subdivision regulations shall be applicable to any parcels which are taken from existing parcels of record by metes and bounds description and the City may deny the issuance of building permits to any parcels so divided, pending compliance with the subdivision regulations.

5. Any subdivision creating parcels, tracts or lots after the adoption of these regulations shall be platted.

Subd. c. Rules and Definitions

1. Rules

(1) Words used in the present tense include the past and future tense; the singular number includes the plural and the plural includes the singular; the word “shall” is mandatory, and the words “should” and “may” are permissive.

(2) In the event of conflicting provisions in the text of these regulations, the more restrictive shall apply.

2. Definitions

For the purpose of these regulations, certain terms and words are hereby defined as follow:

(1) Alley – A public right-of-way usually less than thirty (30) feet in width which normally affords a secondary means of vehicular access to abutting property.
(2) **Attorney** – The attorney employed by the City unless otherwise stated.

(3) **Block** – The enclosed area within the perimeter of roads, property lines or boundaries of the subdivision.

(4) **Boulevard** – The portion of the street right-of-way between the curb line and the property line.

(5) **Butt Lot** – A lot at the end of a block and located between two corner lots.

(6) **Community** – The City of Staples.

(7) **Comprehensive Plan** – A plan prepared by the City including a compilation of policy statements, goals, standards and maps indicating the general locations recommended for the various functional classes of land use and for the general physical development of the community and includes any plan or parts thereof.

(8) **Concept Plan or Sketch Plan** – A generalized plan of a proposed subdivision indicating lot layouts, street, park areas, and water and sewer systems presented to the City officials at the pre-application meeting.

(9) **Contour Map** – A map on which irregularities of land surface are shown by lines connecting points of equal elevations. Contour interval is the vertical height between contour lines.

(10) **Copy** – A print or reproduction made from a tracing.

(11) **Corner Lot** – A lot bordered on at least two sides by streets.

(12) **County** – Todd and/or Wadena Counties, Minnesota.

(13) **Development** – The act of building structures and installing site improvements.

(14) **Double Frontage Lots** – Lots which have a front line abutting on one street and a back or rear line abutting on another.

(15) **Drainage Course** – A water course or indenture for the drainage of surface water.

(16) **Easement** – A grant by an owner of land for a specific use by persons other than the owner.
(17) **Engineer** – The registered engineer employed by the City unless otherwise stated.

(18) **Final Plat** – The final map, drawing or chart on which the subdivider’s plan of subdivision is presented to the City Council for approval and which, if approved, will be submitted to the County Recorder.

(19) **Governing Body** – Staples City Council.

(20) **Key Map** – A map drawn to comparatively small scale which definitely shows the area proposed to be platted and the areas surrounding it to a given distance.

(21) **Lot** – A parcel of land separated from other parcels by legal description and meeting the physical standards of this ordinance.

a) **Lot Area**. The horizontal plane bounded by the Lot Lines.

b) **Lot Corner**. A lot bounded by the intersecting boundaries of two or more streets.

c) **Lot Depth**. The average horizontal distance between the Front Lot Line and the Rear Lot Line.

d) **Lot Line**. A line defining the horizontal plane of a Lot.

e) **Lot Line, Front**. The line connecting the Side Lot Line of a Lot measured along the boundary of the Right-of-Way designated by the City Council to serve the Lot.

f) **Lot Line, Rear**. That Lot Line which is opposite the Front Lot line. If the Rear Lot Line is less than ten (10) feet in length, or if the Lot forms a point at the rear, the Rear Lot Line shall be a line ten (10) feet in length within the Lot parallel to and at the maximum distance from the Front Lot Line.

g) **Lot Line, Side**. Any Lot Line which is not a Front Lot Line or a Rear Lot Line.

h) **Lot Width**. Lot width shall be measured as follows:

1. For lots located entirely on the turn-around portion of a cul-de-sac or for pie-shaped lots, lot width is the maximum horizontal distance between the side lot lines measured at any point in the lot.
2. For flag lots or lots not having frontage on a public or private right-of-way, lot width is the maximum horizontal distance between the
side lot lines measured at the point equal in distance to the front yard setback from the first lot line generally parallel to the front lot line or to the right-of-way.

3. For all other lots, lot width is the maximum horizontal distance between the side lot lines measured at the front building setback line.

i) **Out-Lot.** A parcel of land in a platted subdivision separated from the other parcels by a legal description and not meeting the physical standards of this Ordinance, and being unbuildable until such physical standards are met.

j) **Property Line.** The legal boundary of a Lot.

(22) **Metes and Bounds Description** – A description of real property which is not described by reference to a lot or block shown on a map, but is described by starting at a known point and describing the bearing and distances of the lines forming the boundaries of the property or delineates a fractional portion of a section, lot or area by describing lines or portions thereof.

(23) **Minimum Subdivision Design Standards** – The guides, principles and specifications for the preparation of subdivision plats indicating, among other things, the minimum and maximum dimensions of the various elements set forth in the plan.

(24) **Owner** – An individual, firm, association, syndicate, co-partnership, corporation, trust, or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under these regulations.

(25) **Pedestrian Way** – A public right-of-way across or within a block intended to be used by pedestrians.

(26) **Person** – Any individual, firm, association, syndicate or partnership, corporation, trust, or any other legal entity.

(27) **Planned Unit Development** – A subdivision development planned and constructed so as to group housing units into patterns while providing a unified network of open space and wooded areas, and meeting the overall density regulations of this Ordinance and the Zoning Ordinance.

(28) **Plat** – The drawing or map of a subdivision prepared for filing of record pursuant to Minn. Stat. Section 505 and containing all elements and requirements set forth in applicable local regulations adopted pursuant to Minn. Stat. § 462.358 and Minn. Stat. Section 505.
(29) **Preliminary Approval** – Official action taken by a municipality on an application to create a subdivision which establishes the rights and obligations set forth in Minn. Stat. § 462.358 and the applicable subdivision regulation. In accordance with Minn. Stat. § 462.358, and unless otherwise specified in the applicable subdivision regulation, preliminary approval may be granted only following the review and approval of a preliminary plat or other map or drawing establishing without limitation the number, layout, and location of lots, tracts, blocks, and parcels to be created, location of streets, roads, utilities and facilities, park and drainage facilities, and lands to be dedicated for public use.

(30) **Preliminary Plat** – The preliminary map, drawing or chart indicating the proposed layout of the subdivision to be submitted to the Planning Commission and City Council for their consideration.

(31) **Protective Covenants** – Contracts entered into between private parties and constituting a restriction on the use of all private property within a subdivision for the benefit of the property owners, and to provide mutual protection against undesirable aspects of development which would tend to impair stability of values.

(32) **Right-of-Way** - The land designated by the City Council for public vehicular and pedestrian traffic by easements, dedication, statutory uses, common law dedication, or other instrument or legal right.

(33) **Streets**

a) **Street** – A public way for vehicular traffic, whether designed as a street, highway, thoroughfare, arterial parkway, throughway road, avenue, lane, place or however otherwise designated.

b) **Collector Street** – A street which carries traffic from local streets to arterials.

c) **Cul-de-sac** – A street turn-around with only one (1) outlet.

d) **Service Street** – Marginal access street, or otherwise designated, is a minor street, which is parallel and adjacent to a thoroughfare and which provides access to abutting properties and protection from through traffic.

e) **Local Street** – A street of limited continuity used primarily for access to the abutting properties and the local need of a neighborhood.
f) **Arterial Street** – A street or highway with access restrictions designed to carry large volumes of traffic between various sections of the City and beyond.

g) **Private Street** – A street serving as vehicular access to one (1) or more parcels of land which is not dedicated to the public but is owned by one (1) or more private parties.

(34) **Street Width** – For the purpose of this Ordinance, the shortest distance between the lines delineating the right-of-way.

(35) **Subdivider** – Any person commencing proceedings under the Ordinance to effect a subdivision of land hereunder for himself or for another.

(36) **Subdivision** – The described tract of land which is to be or has been divided into two (2) or more lots or parcels any of which resultant parcels is less than two and one-half (2½) acres in area, for the purpose of transfer of ownership or a building development; or if a new street is involved, any division of a parcel of land. The term includes re-subdivision and, where appropriate to the context, relates either to the process of subdividing or to the land subdivided.

(37) **Tracing** – A plat or map drawn on transparent paper or cloth which can be reproduced by using regular reproduction procedure.

(38) **Zoning Ordinance** – A zoning ordinance or resolution controlling the use of land as adopted by the City.

**Subd. d. Administration**

1. The following procedures shall be followed in the administration of this Ordinance and no real property within the jurisdiction of this Ordinance shall be subdivided or a plat recorded until a Preliminary Plat and a Final Plat of the proposed subdivision have been reviewed by the Planning Commission and the city staff, and until the Final Plat has been approved by the City Council as set forth in the procedures provided herein. Planned Unit Developments shall be administered according to Chapter 508 Planned Unit Development (PUD) of the City of Staples Zoning Code.

2. Prior to the preparation of a preliminary plat, the subdividers or owners shall meet with the Zoning Administrator and other appropriate officials in order to be made fully aware of all applicable ordinances, regulations, and plans in the area to be subdivided. At this time or at subsequent informal meetings, the subdivider shall submit a general sketch plan of the proposed subdivision and preliminary proposals for the provision of water and sewer service. The sketch plan can be presented in simple form but must show that consideration has been given to the relationship of the proposed subdivision to existing community facilities that would serve it, to neighboring subdivisions and developments, and to the natural resources and topography of the site.
The subdivider is urged to avail himself/herself of the advice and assistance of the local planning staff at this point in order to save time and effort, and to facilitate the approval of the preliminary plat.

3. Preliminary Plat

(1) After the pre-application meeting, the subdivider shall submit ten (10) copies of the Preliminary Plat to the Zoning Administrator at least thirty (30) days prior to the Planning Commission meeting at which such Plat is to be considered. The subdivider shall include a written statement along with the Preliminary Plat describing the proposed subdivision. The written statement shall include the anticipated development of existing natural features and vegetation, and any other information required by the subdivision regulations.

(2) The Zoning Administrator shall submit one (1) copy of the Preliminary Plat to the Planning Commission and any other appropriate city officials. One (1) copy shall also be submitted to the County Engineer if the plat abuts a County road and one (1) copy to the State Department of Transportation if the plat abuts a State Highway, for review and comment.

(3) The Zoning Administrator and other appropriate city officials shall review the Preliminary Plat and shall transmit a report of their findings and recommendations together with any supporting material to the Planning Commission prior to the meeting at which such Plat is to be considered. The subdivider shall be required to pay the cost of such services and the City Council shall establish a fee to cover such costs.

(4) Within thirty (30) days after the plat has been filed and after reports and certifications have been received as requested, the Planning Commission shall hold a public hearing on the Preliminary Plat after notice of the time and place thereof has been published once in the official newspaper at least ten (10) days before the day of the hearing. The subdivider or a duly authorized representative must attend the Planning Commission meetings at which his/her proposal is scheduled for consideration. This shall constitute the public hearing on the plat as required by state law. Within thirty (30) days of the conclusion of the public hearing, the Planning Commission shall make its report to the City Council.

(5) The Planning Commission may forward to the City Council a favorable, conditional, or unfavorable report and said reports shall contain a statement of findings and recommendations.

(6) The Preliminary Plat shall be approved or disapproved by the City Council within one hundred and twenty (120) days following the delivery of an application completed in compliance with these regulations by the
applicant, unless an extension of the review period has been agreed to by the applicant. If the City fails to approve or disapprove the Preliminary Plat within the review period, the Preliminary Plat shall be deemed approved, and upon demand by the applicant the City shall execute a certificate to that effect. If the City Council disapproves the Preliminary Plat, the grounds for any such disapproval shall be set forth in the minutes of the City Council meeting and reported to the applicant.

(7) The approval of a Preliminary Plat is an acceptance of the general layout as submitted, and indicates to the subdivider that he may proceed toward preparation of a Final Plat in accordance with the terms of approval and provisions of the subdivision regulations.

(8) During the intervening time between approval of the preliminary plat and the signing of the Final Plat, the subdivider must submit acceptable engineering plans for all required improvements to and coordinate all work with the City Engineer.

(9) In the case of all subdivisions, the Planning Commission shall recommend denial of, and the City Council may deny, approval of a preliminary or final plat if it makes any of the following findings:

a) That the proposed subdivision, including the design, is in conflict with any adopted component of the Comprehensive Plan of Staples; or

b) That the physical characteristics of this site, including but not limited to topography, vegetation, susceptibility to erosion and siltation, susceptibility to flooding, water storage, drainage and retention, are such that the site is not suitable for the type of development or use contemplated; or

c) That the site is not physically suitable for the proposed density of development; or

d) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage; or

e) That the design of the subdivision or the type of improvements is likely to cause serious public health problems; or

f) That the design of the subdivision or the type of improvements will conflict with easements of record.
4. Final Plat

(1) The subdivider shall engage a registered land surveyor to prepare a Final Plat which shall meet all the requirements of Minnesota Statutes, Chapter 505.

(2) The subdivider shall file, within one (1) year of Preliminary Plat approval, a Final Plat limited to such portion of the Preliminary Plat which the subdivider proposes to develop and record at one time; otherwise, the Preliminary Plat shall become null and void. The entire area of the Preliminary Plat shall be platted in Final Plat form within a period of five (5) years, or that portion not platted in Final Plat form will become null and void.

(3) The subdivider shall submit ten (10) copies of the Final Plat to the Zoning Administrator at least thirty (30) days before the Planning Commission meeting at which such Plat is to be considered.

(4) The Final Plat shall have incorporated all changes required by the City and by the County Engineer regarding county roads, and State Department of Transportation regarding state highways, but in all other respects it shall conform to the preliminary plat as approved.

(5) The Zoning Administrator shall transmit one (1) copy of the Final Plat to the Planning Commission, City Engineer, City Attorney, and other appropriate city officials.

(6) The city staff shall review the Final Plat and shall transmit reports of their recommendations to the Planning Commission prior to the meeting at which such Plat is to be considered.

(7) The Planning Commission shall study the Final Plat, considering the reports of the City Engineer, City Attorney, and other municipal departments and/or employees, and then shall transmit its recommendations to the Council within thirty (30) days of submission from the Zoning Administrator.

The City Council shall, if the Zoning Administrator indicates the Final Plat deviates from the approved Preliminary Plat, determine if the submission shall represent a new plat. If the submission does represent a new plat, the City Council shall deny the Final Plat and direct the subdivider to resubmit his proposal following Preliminary Plat requirements.

(8) The City Council shall act upon the Final Plat within thirty (30) days of receiving the recommendations of the Planning Commission, whereupon the City Clerk shall notify the subdivider of the Council’s action.
Upon request by the applicant for final approval by the City, the City shall certify final approval within sixty (60) days if the applicant has complied with all conditions and requirements of the regulations and all conditions and requirements upon which the preliminary plat approval was conditioned either through performance or agreements assuring performance. If the City fails to certify final approval within the time frame, and if the applicant has complied with all conditions or requirements, the final plat shall be deemed approved and upon demand by the applicant, the City shall execute a certificate to that effect.

9. Upon approval of the final plat by the Staples City Council, the subdivider shall file the Final Plat with the County Recorder of Todd or Wadena County, as is appropriate, after it has been signed by the Mayor. The Final Plat shall be filed within sixty (60) of the date of the City Council resolution granting final approval or, if the City Council fails to act, within sixty (60) days of the date the Final Plat was filed with the Zoning Administrator. The subdivider shall, within thirty (30) days of recording, furnish the City Clerk with a reproducible print of the final plat showing evidence of the recording. Any Final plat which is not filed in a timely manner shall be considered null and void unless, prior to the expiration of the 60 days, the sub-divider requests an extension of time in writing and the City Council grants the request for good cause. Any extension so granted may be subject to such conditions or for such period of time not exceeding 180 days as the City Council deems reasonable.

No changes, erasures, modifications or revisions shall be made in any Final Plat after approval has been given by the City Council and endorsed in writing on the Plat, unless the said Plat is first resubmitted to the City Council and such body approves any modifications. In the event that any such Final Plat is recorded without complying with this requirement, the same shall be considered null void and the City Council shall institute proceedings to have the Plat stricken from the records of the City.

5. For one year following preliminary approval and for two (2) years following final approval, unless the subdivider and the City agree otherwise, no amendment to a comprehensive plan or official control shall apply to or affect the use, development, density, lot size, lot layout, or dedication or platting required or permitted by the approved application. Thereafter, pursuant to its regulations, the City may extend the period by agreement with the subdivider and, subject to all applicable performance conditions and requirements, it may require submission of a new application unless substantial physical activity and investment has occurred in reasonable reliance on the approved application and the subdivider will suffer substantial financial damage as a consequence of a requirement to submit a new application. In connection with a subdivision involving planned and staged development, the City may by resolution or
agreement grant the rights referred to herein for such period of time longer than three (3) years which it determines to be reasonable and appropriate.

6. A person conveying a new parcel of land which, or the plat for which, has not previously been filed or recorded, and which is part of or would constitute a subdivision to which adopted municipal subdivision regulations apply, shall attach to the instrument of conveyance either: (a) recordable certification by the clerk of the municipality that the subdivision regulations do not apply, or that the subdivision has been approved by the governing body, or that the restrictions on the division of taxes and filing and recording have been waived by resolution of the governing body of the municipality in this case because compliance will create an unnecessary hardship and failure to comply will not interfere with the purpose of the regulations; or (b) a statement which names and identifies the location of the appropriate municipal offices and advises the grantee that municipal subdivision and zoning regulations may restrict the use or restrict or prohibit the development of the parcel, or construction on it, and that the division of taxes and the filing or recording of the conveyance may be prohibited without prior recordable certification of approval, nonapplicability, or waiver from the municipality. In any action commenced by a buyer of such a parcel against the seller thereof, the misrepresentation of or the failure to disclose material facts in accordance with this subdivision shall be grounds for damages. If the buyer establishes a right to damages, a district court hearing the matter may in its discretion also award to the buyer an amount sufficient to pay all or any part of the costs incurred in maintaining the action, including reasonable attorney fees, and an amount for punitive damages not exceeding five per centum of the purchase price of the land.

Action commenced by a buyer of such a parcel against the seller thereof, the misrepresentation of or the failure to disclose material facts in accordance with this subdivision shall be grounds for damages. If the buyer establishes his right to damages, a district court hearing the matter may in its discretion also award to the buyer an amount sufficient to pay all or any part of the costs incurred in maintaining the action, including reasonable attorney fees, and an amount for punitive damages not exceeding five (5) percent of the purchase price of the land.

Subd. e. Data For Preliminary and Final Plats

1. Data For Preliminary Plat

(1) Identification and Description

a) Proposed name of subdivision and street names, which shall not duplicate or be similar in pronunciation or spelling to the name of any plat heretofore recorded in Todd or Wadena County.

b) Location by section, township, range, and by legal description.
c) Names and addresses of the recorded owner and any agent having control of the land, subdivider, land surveyor, engineer, and designer of the plan.

d) Graphic scale not less than one (1) inch to three hundred (300) feet.

e) North point.

f) Key map including area within one (1) mile radius of plat.

g) Date of preparation.

h) A current Abstract of Title or a Registered Property Certificate along with any unrecorded documents and an Opinion of Title by the subdivider’s attorney.

(2) Existing Conditions in Proposed Tract

a) Boundary line of proposed subdivision, clearly indicated and to a close degree of accuracy.

b) Existing zoning classifications for land within and abutting the subdivision including flood plain, and shoreland districts, if applicable.

c) A general statement of the approximate acreage and dimensions of the lots.

d) Location, right-of-way width, and names of existing or platted streets, or other public ways, parks, and other public lands, permanent buildings and structures, easements and section and corporate lines within the plan.

e) Boundary lines of adjoining unsubdivided or subdivided land, identified by name and ownership, including all contiguous land owned or controlled by the subdivider.

f) Topographic data, including contours at vertical intervals of two (2) feet, watercourses, marshes, rock outcrops, power transmission poles and lines. Other significant features may also be required to be shown.

g) Wetland data shall be required and must consist of a wetland delineation report which identifies all wetlands, ponds, lakes, waterways, floodplains and shorelines. The owners or subdividers shall submit to the Zoning Administrator office three (3) copies of the full wetland delineation report for consideration with the preliminary plat. Any area located in the areas set forth by these provisions shall not be considered in the calculation for contiguous soils in rural areas.
h) A description of the soils by representatives of the Todd or Wadena County Soil and Water Conservation District. The City may require an analysis of soil borings if deemed necessary by the Planning Commission or City Council.

i) If applicable, limits of the flood plain, floodway and flood fringe areas.

j) Existing zoning and land use in the area within three hundred (300) feet of the boundaries of the tract.

k) Plans for water and sewer service and drainage. Location and size of existing sewers, water mains, culverts or other underground facilities within the preliminary plan area. Such data as existing grades, invert elevations, and location of catch basins, manholes, hydrants and street pavement width and type, shall also be shown.

(3) Subdivision Design Features. The following Subdivision Design features shall be provided:

a) Layout of proposed streets, showing right-of-way widths and proposed names of streets. The name of any street heretofore used in the City or its environs shall not be used, unless the proposed street is an extension of an already named street, in which event the same shall be used.

b) Locations and widths of proposed alleys, pedestrian ways and utility easements.

c) Proposed street and alley centerline profile grades showing approximately both existing and proposed centerline profile grade lines.

d) Proposed location and size of storm and sanitary sewer lines and water mains and proposed gradient of sewer lines.

e) Proposed storm and sanitary sewer point of discharge or connection to existing systems and water main connection or source of supply.

f) Layout, numbers, and preliminary dimensions of lots and blocks.

g) Minimum front, side, and rear building setback lines, indicating dimensions.

h) Areas, other than streets, alleys, pedestrian ways and utility easements intended to be dedicated or preserved for public use, including the size of such area or areas in acres.
i) A separated draft of all proposed restrictive covenants, if they are to be used, for the preliminary plat.

(4) Other information. The following additional information shall be provided.

a) Provision for surface water disposal, drainage, and flood control.

b) If any zoning changes are contemplated, the proposed zoning plan for the areas.

c) Where the subdivider owns property adjacent to that which is being proposed for the subdivision, the Planning Commission shall require that the subdivided submit a sketch plan of the remainder of the property so as to show the possible relationships between the proposed subdivision and the future subdivision. In any event, all subdivisions shall be shown to relate well with existing or potential adjacent subdivisions.

d) Potential re-subdivision and use of excessively deep or wide (over 200 feet) lots shall be indicated.

e) Such other information as may be requested by the Zoning Administrator or Planning Commission.

2. Data And Requirements For Final Plat

(1) The plat shall be prepared by a land surveyor who is registered in the State of Minnesota and shall comply with Minnesota Statutes, Chapter 505 and these regulations.

(2) Data as required by the City Engineer, i.e., accurate angular and linear dimensions for all lines, angles and curvatures used to describe boundaries, streets, easements, and other important features.

(3) Identification and description data as required for the Preliminary Plat.

(4) Boundaries of the property; lines of all proposed streets and alleys, with their width, and other areas intended for public use.

(5) Lines of adjoining streets and alleys, with their width and names.

(6) All lot lines and easements, with figures showing their dimensions.

(7) An identification system for all lots and blocks.
(8) Certification by a registered land surveyor to the effect that the Plat represents a
survey made by him and that monuments and markers thereon exist as located and
all dimensional and geodetic details are correct.

(9) Notarized certification by owner, and by any mortgage holder of record, of
adoption of the Plat and the dedication of streets and other public areas.

(10) Certification showing that all taxes and special assessments currently due have
been paid.

(11) Title opinion by a practicing attorney-at-law based upon an examination of an
abstract of the records of the Todd or Wadena County Recorder for the lands
included within the plat and showing the title to be in the name of the owner or
subdivider. The date of continuation of the abstract examined or the date of the
examination of the records shall be within thirty (30) days prior to the date the
final plat is filed with the County Auditor. The owner or subdivider shown in the
title opinion shall be the owner of record of the platted lands on the date of
recording of the plat with the Todd or Wadena County Recorder.

(12) Execution by all owners of any interest in the land and any holders of a mortgage
therein of the certificate required by Minnesota Statutes and which certificate
shall include an accurate legal description of any area to be dedicated for public
use and shall include a dedication to the City of sufficient easements to
accommodate utility services in such form as shall be approved by the City
Attorney.

3. Certifications

The final plat shall include the required certifications by the City and County officials.
This shall include a signature by the Chairman of the Planning Commission indicating
that the plat has been reviewed by the Planning Commission.

(1) Form for approval by signature of county officials concerned with the recording
of the plat.

a) No delinquent taxes and transfer entered this _____ day of
_________________ 20 ___.

[Name] Todd/Wadena County Auditor

b) Document Number ________________________.
   I hereby certify this instrument was filed in the office of the County
Recorder for record on this _____ day of _____________ 20 ___, at
_____ o’clock a.m./p.m., and was duly recorded in Book __________ of
________________ on page ____.
(2) Form of approval by signature of City Officials.

a) I hereby certify that proper evidence of title has been presented to and examined by me, and I hereby approve this plat as to form and execution.

Dated this ____ day of _______________ 20 ____.

b) Checked and approved as to compliance with Chapter 505 Minnesota Statutes.

Dated this ____ day of _______________ 20 ____.

c) Checked and approved as in compliance with the Staples Zoning Ordinance and Subdivision Regulations.

Zoning Administrator

d) Approved by Staples City Council on this ____ day of _______________ 20 ____.

Mayor, City of Staples

Attest:

City Clerk

Subd. f. Subdivision Design Standards

1. The proposed subdivision shall conform to the Comprehensive Plan adopted by the City.

2. Streets and Thoroughfares
(1) **General Street Design**

a) The design of all streets shall be considered in relation to public safety, existing and planned streets, efficient circulation of traffic, topographical conditions, run-off of storm water, proposed use of the land to be served by such streets, and the Comprehensive Plan of the community.

b) When a new subdivision adjoins unsubdivided land that is susceptible to being divided, the arrangement of streets shall allow for their appropriate continuation into adjoining areas. Such streets shall be carried to the boundaries of the unsubdivided land.

c) Where the parcel is subdivided into larger tracts than for building lots, such parcels shall be divided so as to allow for the opening of major streets and the ultimate extension of adjacent minor streets.

(2) **Street Names** – Street names shall not duplicate the names of other streets.

(3) **Street Width and Grades** – The following standards for street width and grades shall be followed by the subdivider.

<table>
<thead>
<tr>
<th>Type of Highway or Street</th>
<th>Minimum Width</th>
<th>Maximum Grade</th>
<th>Minimum Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trunk Highway and Arterials</td>
<td>100-150 feet</td>
<td>5%</td>
<td>.5%</td>
</tr>
<tr>
<td>Collectors</td>
<td>80 feet</td>
<td>8%</td>
<td>.5%</td>
</tr>
<tr>
<td>Local Streets</td>
<td>66 feet</td>
<td>10%</td>
<td>.5%</td>
</tr>
<tr>
<td>Frontage Roads</td>
<td>60 feet</td>
<td>10%</td>
<td>.5%</td>
</tr>
<tr>
<td>Cul-de-sacs</td>
<td>60 feet</td>
<td>10%</td>
<td>.5%</td>
</tr>
<tr>
<td>Turn around radius of Cul-de-sac</td>
<td>80 feet</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(4) **Street Intersections** – Insofar as practical, streets shall intersect at right angles. In no case shall the angle formed by the intersection of two (2) streets be less than sixty (60) degrees. Intersections having more than four (4) corners shall be prohibited. Adequate land for future intersection and interchange construction needs shall be dedicated to the City.

(5) **Tangents** – A tangent of at least one hundred (100) feet shall be introduced between reverse curves on collector streets and fifty (50) feet on lesser streets.

(6) **Deflections** – When connecting street lines deflect from each other at one point by more than ten (10) degrees they shall be connected by a curve with a radius adequate to ensure a sight distance of no less than five hundred (500) feet for arterials, three hundred (300) feet for collectors, one hundred (100) feet for all other streets.
(7) **Street Jogs** – Street jogs with centerline offsets of less than one hundred fifty (150) feet shall be prohibited.

(8) **Local Streets** – Local streets shall be laid out so as not to encourage through traffic.

(9) **Cul-de-sac** – The maximum length of a street terminating in a cul-de-sac shall be five hundred (500) feet, measured from the center line of the street of origin to the end of the right-of-way. Each cul-de-sac shall be provided with a turn-around having a minimum outside roadway diameter of eighty (80) feet and a minimum street property line diameter of one hundred (100) feet.

(10) **Access to Arterial Streets** – In the case where a proposed plat is adjacent to a limited access highway (arterial), there shall be no direct vehicular or pedestrian access from individual lots to such highways. As a general requirement, access arterials shall be at intervals of not less than ¼ mile and through existing and established crossroads where possible. The City Council may require the developer to provide local service drives along the right-of-way of such facilities, or they may require that lots back on the arterials, in which case vehicular and pedestrian access between the lots and arterial shall be prohibited.

(11) **Half Streets** – Half streets shall be prohibited except where it will be practical to require the dedication of the other half when the adjoining property is subdivided, in which case the dedication of a half street may be permitted.

(12) **Private Streets** – Private streets shall be prohibited.

(13) **Corners** – Curb lines at street intersections shall be rounded at a radius of not less than fifteen (15) feet.

(14) **Alleys** – Alleys, where permitted by the City, shall be at least twenty (20) feet wide in residential areas and at least twenty-four (24) feet wide in commercial areas. The City may require alleys in commercial areas where adequate off-street loading space is not available. Dead-end alleys, alley intersections and sharp changes in alignment shall be prohibited.

(15) **Pedestrian Walkways** – The Planning Commission and/or Council may require the provision of pedestrian ways in proximity to public service areas such as parks, schools, shopping facilities or in other appropriate locations of a similar nature. The design of the pedestrian walkways shall be considered in their relation to existing and planned pedestrian walkways, to reasonable circulation of traffic, to topographic conditions, to runoff of storm water and to the proposed uses of the area to be served. Pedestrian right-of-ways shall be at least ten (10) feet wide.
(16) **Hardship to Owners of Adjoining Property** – The street arrangements shall not be such as to cause hardship to owners of adjoining property in platting their own land and providing convenient access to it.

3. **Blocks**

   (1) The length of blocks shall not exceed one thousand two hundred (1200) feet nor be less than three hundred (300) feet. Pedestrian ways at least ten (10) feet wide at their approximate centers may be required for blocks over nine hundred (900) feet long.

   (2) Blocks intended for commercial and industrial use must be designed as such, and the block must be of sufficient size to provide for adequate off-street parking, loading and such other requirements of the City.

   (3) The width of a block shall normally be sufficient to allow two (2) tiers of lots of appropriate length.

4. **Lots**

   (1) **Size** – For areas served by central sewer and water systems, the lot dimensions shall be such as to comply with the minimum lot areas specified in the Zoning Ordinance.

   (2) **Side Lot Lines** – Side lines of lots shall be substantially at right angles to straight street lines or radial to curved street lines.

   (3) **Drainage** – Lots shall be graded so as to provide drainage away from building locations.

   (4) **Natural Features** – In the subdividing of any land, due regard shall be shown for all natural features, such as tree growth, wetlands, steep slopes, water courses, or similar conditions, and plans adjusted to preserve those which will add attractiveness, safety and stability to the proposed development.

   (5) **Lot Remnants** – All remnants of lots below the minimum lot size left over after subdividing of a larger tract must be added to adjacent lots rather than allowed to remain as unusable parcels unless the owner can show plans for future use of such remnant.

   (6) **Double Frontage Lots** – Double frontage (lots with frontage on two parallel streets) or reverse frontage shall not be permitted except where lots back on an arterial or collector street. Such lots shall have an additional depth of at least ten (10) feet in order to allow for screen planting along the back lot line.
5. Easements

(1) Utilities – Easements of at least ten (10) feet wide centered on rear lot lines shall be provided for utilities where necessary. Easements for storm or sanitary sewers shall be at least twenty (20) feet wide. They shall have continuity of alignment from block to block. Temporary construction easements may be required where installation depths are greater than twelve (12) feet. Utility easements shall be kept free of any vegetation or structures which would interfere with the free movement of utility service vehicles.

(2) Water Courses – When a subdivision is traversed by a water course, drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the construction as may be determined to be necessary by the City Engineer.

6. Parks, Open Space, and Public Use

(1) It is declared general policy that in all new subdivisions a percentage of the developable area of all property subdivided shall be dedicated for parks, playgrounds, or other public use. Such percentage shall be in addition to the property dedicated for streets, alleys, waterways, pedestrian ways or other public ways. The following schedule shall be applicable to all subdivisions. This schedule is based upon the density of the development allowed in each district and is intended to equalize the amount and value of land dedicated for parks per dwelling unit in the various districts.

<table>
<thead>
<tr>
<th>Zoning of Area</th>
<th>Percentage of Total Developable Land Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-1</td>
<td>5%</td>
</tr>
<tr>
<td>R-2</td>
<td>6%</td>
</tr>
<tr>
<td>R-3</td>
<td>8%</td>
</tr>
<tr>
<td>R-4</td>
<td>10%</td>
</tr>
</tbody>
</table>

No areas may be dedicated as parks, playgrounds, or public lands until such areas have been approved for the purpose to which they are to be dedicated. The park land shall be graded to the contours set forth in the Preliminary Plat.

The developer shall provide a minimum of three (3) inches of black dirt over the entire park area and the area shall be seeded with a type of seed approved by the City. The financial guarantees by the developer to the City shall be in effect as least until such time that the park land is graded and seeded.

(2) At least fifty (50) percent of the gross area dedicated for parks, open space or public use shall be suitable for active recreation use such as softball, football, etc. These areas shall have a slope of less than two (2) percent grade and be largely
clear of forest vegetation. Other areas to be dedicated may be forested and may have steeper slopes.

(3) When the subdivision is small or does not include a park or public area shown on the Comprehensive Plan, or if in the judgment of the Council the area proposed to be dedicated is not suitable or desirable for park/playground purposes because of location, size or other reason, the Council may require, in lieu of land dedication, a payment to the municipality of a sum equal to the percentage listed above of the undeveloped value of the land to be subdivided. The undeveloped land value shall be the value of the land when ready to be platted but not including utility costs. The City Council and/or its agents shall have the authority to make the final determination of the value of the land for purposes of park dedication. If requested, the City Council shall provide the developer or landowner with the methodology used to calculate the value of the land.

(4) Such dedication of land for public use shall be without restrictions or reservations and shall be transferred to the City by deed or by plat.

(5) The City of Staples may choose to accept a cash fee as set by ordinance from the applicant for some of all of the new lots created, based on fair market value of the land, no later than at the time of the approval. Cash payments received will be used only for the acquisition and development or improvement of parks, recreational facilities, playgrounds, trails, wetlands, or open space based on the approved park systems plan. All cash in lieu of dedication of land will be used in accordance with Minn. Stat. § 462.358, Subd. 2(g).

(6) Previously subdivided property from which a park dedication or cash in lieu contribution has been received, upon re-subdivision with the same number of lots, is exempt from park dedication requirements. If, as a result of the re-subdivision of the property, the number of lots is increased, the park dedication of cash in lieu contribution shall be applied only to the net increase in the number of lots.

Subd. g. Required Improvements

1. The subdivider-developer shall be required to provide the following improvements for residential subdivisions unless the Council elects to do so under special assessments.

(1) Monuments – Steel monuments shall be placed within six (6) inches of final elevation at all lot corners, block corners, angle points, points of curves in streets and at intermediate points as shown on the Final Plat. Such installation shall be the subdivider’s responsibility and at his expense. All U.S., State, County, or other official benchmarks, monuments, or triangulation stations in or adjacent to the property shall be preserved in precise position.

(2) Streets
a) **Grading** – Streets shall be graded to the full width of the right-of-way in accordance with street grades submitted to and approved by the City Engineer. All street grading and gravel base construction shall be in accordance with specifications on file in the Engineer’s office. Grading shall be complete prior to installation of applicable underground utilities, either private or public in nature. Gravel base construction shall be undertaken after completion of the installation of underground utilities.

b) **Curb, Gutter and Sidewalk** – Curb, gutter and sidewalk are required and shall be constructed in accordance with plans approved by the City Engineer.

c) **Paving**. All streets installed must be paved according to specifications administered by the Director of Public Works.

(3) **Utilities**

a) **Water supply** – Where a municipal water supply is available within a reasonable distance, the subdivider shall be required to provide a connection to the municipal system. The feasibility of this requirement shall be evaluated based on the cost of constructing the connection weighed against the cost of installing individual wells and the likelihood of an eventual municipal connection in the future.

1. Water mains shall be provided to serve the subdivision by extension of an existing community system wherever feasible. Service connections shall be stubbed into the property line and all necessary fire hydrants shall also be provided. Extensions of the public water supply system shall be designed so as to provide public water in accordance with the standards of the City.

2. In areas being subdivided for rural service with large lots, as specified in the Zoning Ordinance, the location of individual wells shall be provided on each lot, property place din relationship to the individual sewage disposal facilities on the same and adjoining lots. Well location plans must be submitted for the approval of the Zoning Administrator.

b) **Sanitary Sewer** – Sanitary sewer facilities adequate to serve the subdivision shall be installed in accordance with the latest plans and specifications of the City Engineer and shall meet the requirements of the master plan for water main extensions of the municipality. All new construction shall be connected to the municipal water system.
c) **Stormwater Facilities** – Storm sewer and/or other surface drainage facilities shall be installed as determined to be necessary by the City Engineer for the proper drainage of surface waters.

d) **Street Lighting** – Street lighting of a type approved by the City may be required at all intersections within the subdivision.

e) **Street Signs** – Street signs of standard design approved by the City shall be installed at each street intersection.

f) **Public Utilities** – All utility lines for telephone and electrical service shall be placed in rear line easements when carried on overhead poles.

(4) **Lots** – All lots shall be brought to final grade.

(5) **Specifications and Inspections** – Unless otherwise stated, all of the required improvements shall conform to engineering standards and specifications as required by the City Council. Such improvements shall be subject to inspection and approval by, and shall be made in sequence as determined by, the City Engineer.

### Subd. h. Payment for Installation of Improvements

1. The required improvements as listed in this Ordinance are to be furnished and installed at the sole expense of the subdivider. This shall include all costs and expenses incurred by the City regardless of whether or not final approval of the proposed subdivision is granted. However, if the cost of an improvement would by general policy be assessed only in part to the improved property and the remaining cost paid out of general tax levy, provision may be made for the payment of a portion of the cost by the community. Further, if any improvement installed within the subdivision will be of substantial benefit to lands beyond the boundaries of the subdivision, provision may be made for causing a portion of the cost of the improvement, representing the benefit to such lands, to be assessed against the same. In such a situation, the subdivider will be required only to pay for such portion of the whole cost of said improvement as will represent the benefit to the property within the subdivision.

2. **Agreement Providing for the Installation of Improvements**

(1) Prior to the installation of any required improvements and prior to approval of the final plat, the subdivider shall enter into a contract in writing with the City requiring the subdivider to furnish and construct said improvements at his sole cost and in accordance with plans and specifications and usual contract conditions. This shall include provision for supervision of details of construction by the Engineer and shall grant to the Engineer authority to correlate the work to be done under said contract by any subcontractor authorized to proceed
thereunder and with any other work being done or contracted by the community in the vicinity.

The agreement shall require the subdivider make an escrow deposit or, in lieu thereof, to submit a letter of credit of other financial guaranty approved by the City Attorney, the amount of the deposit letter of credit or financial guarantee to be equal to one hundred twenty five (125) percent of the Engineer’s estimate of the total cost of the improvements to be furnished under the contract, or such lesser amount as the Council has authorized, including the cost of inspection.

On request of the subdivider, the contract may provide for completion of part or all of the improvements covered thereby prior to acceptance of the plat. In such event, the amount of the deposit letter of credit or financial guarantee may be reduced in a sum equal to the estimated cost of the improvements so completed prior to the acceptance of the plat. The time for completion of the work and the several parts thereof shall be determined by the governing body upon recommendation of the Engineer after consultation with the subdivider. It shall be reasonable with relation to the work to be done, the seasons of the year, and proper correlation with construction activities in the plat and subdivision.

(2) No subdivider shall be permitted to start work on any other subdivision without special approval of the City Council if he has previously defaulted on work or commitments.

3. Financial Guarantee

(1) General – The contract provided for in Section 902 shall require the subdivider to make an escrow deposit or, in lieu thereof, submit a letter of credit or other financial guarantee approved by the City Attorney. The letter of credit or guarantee shall conform to the requirements of this section.

(2) Escrow Deposit – An escrow deposit shall be made with the City Treasurer in a sum equal to one hundred twenty five (125) percent of the total cost as estimated by the Engineer of all the improvements to be furnished and installed by the subdivider pursuant to the contract, which have not been completed prior to approval of the plat. The total costs shall include costs of inspection by the community. The community shall be entitled to reimburse itself out of said deposit for any cost and expense incurred by the community for completion of the work in case of default by the subdivision under said contract, and for any damages sustained on account of any breach thereof. Upon completion of the work and termination of any liability, the balance remaining in said deposit shall be refunded to the subdivider.

(3) Letter of Credit – In lieu of making the escrow deposit, the subdivider may furnish a bank letter of credit with corporate surety in a penal sum equal to one hundred twenty five (125) percent of the total cost as estimated by the Engineer of all the
improvements to be furnished and installed by the subdivider pursuant to the contract, and which have not been completed prior to the approval of the plat. The bond shall be approved as to form by the City Attorney and filed with the Clerk.

(4) Default – In the event the subdivider defaults in the terms or conditions of the contract with the City for such improvements, the City may complete the project referred to in the contract. In addition to collection against the escrow or financial guaranty, the City may assess all costs of the completion incurred by the City against the real property being subdivided as a special assessment.

(5) City Cost Reimbursement – The subdivider shall reimburse the City for all engineering, planning and legal consulting fees, together with inspection fees and other costs reasonably incurred by the City in processing the subdivision application.

4. Construction Plans and Inspection

(1) Construction plans for the required improvements conforming in all respects with the standards and ordinances of the community shall be prepared at the subdivider’s expense by a professional engineer who is registered in the State of Minnesota, and said plans shall contain his certificate. Such plans together with the quantities of construction items shall be submitted to the engineer for his approval and for his estimate of the total costs of the required improvement. Upon approval, such plans shall become a part of the required contract. The tracings of the plans approved by the engineer plus two (2) prints shall be furnished to the City to be filed as a public record.

(2) All required improvements on the site that are to be installed under the provision of this regulation shall be inspected during the course of construction by the City Engineer at the subdivider’s expense, and acceptance by the City shall be subject to the engineer’s certificate of compliance with the contract.

5. To request the City to design and construct improvements the subdivider must submit a petition for all improvements required as part of the subdivision in accordance with State Law. The total maximum allowable costs for completing the improvements which can be financed by City assessment procedures within any plat of subdivision per lot or parcel is determined by the City Council. The assessment shall be spread over a number of years as prescribed by the Council and the unpaid balance shall bear interest in accordance with the statutes of the State of Minnesota in effect at that time. The cost of said improvements shall be the estimated cost for said improvements as computed by the City Engineer.

6. Improvements within a subdivision which have been completed prior to application for approval of the plat or execution of the contract for installation of the required improvements shall be accepted as equivalent improvements in compliance with the
requirements only if the City Engineer shall certify that he is satisfied that the existing improvements conform to applicable standards.

**Subd. i. Other Provisions**

1. **Modifications, Exceptions, and Variances**

   **Variances** – The City Council may grant a variance upon receiving a report from the Planning Commission in any particular case where the subdivider can show by reason of exceptional topography or any other physical conditions that strict compliance with these regulations would cause an undue hardship, provided such relief may be granted without detriment to the public welfare and without impairing the intent and purpose of these regulations.

   The Planning Commission may recommend variations from the requirements of this Ordinance in specific cases which, in its opinion, do not affect the Comprehensive Plan or the intent of this Ordinance. The Planning Commission may recommend and the City Council may also impose such conditions and restrictions in the granting of variances which will insure compliance with the provision of this Ordinance, will further and protect the spirit and intent of these Regulations and will provide protection to the public. Any modifications thus recommended shall be entered in the minutes of the Planning Commission in setting forth the reasons which justify the modifications. The City Council may approve variances from these requirements in specific cases which in its opinion meet the above requirements and do not adversely affect the purposes of this Ordinance.

   **Application Required** – Application for any variance shall be made in writing by the subdivider at the time the Preliminary Plat is considered by the Planning Commission. Said application shall set forth all facts relied upon by the applicant in requesting the variance. Any variance granted shall be by resolution setting forth the reasons which justify the variance and entered on the Minutes of the City Council meeting.

2. Upon receiving a report from the Planning Commission, the City Council may grant a variance from the provisions of these regulations in the case of a planned unit development, as defined in the Zoning Ordinance, provided that the Council shall find that the proposed development is fully consistent with the purposes and intent of these regulations. This provision is intended to provide the necessary flexibility for new land planning and land development trends and techniques.

3. **Minor Subdivisions**

   (1) In the case of a subdivision resulting in three (3) parcels or less situated in a locality where conditions are well defined, the City Council may waive certain requirements of these regulations. In the case of a request to subdivide a lot which is part of the recorded lot, or where the subdivision is to permit the adding of a
parcel of land to an abutting lot or to create not more than three (3) new lots, and the newly created property lines will not cause any resulting lot to be in violation of these regulations or the Zoning Ordinance, the division may be approved by the City Council, after submission of a survey by a registered land surveyor showing the original lot and the proposed subdivision.

(2) In the case of a request to divide a lot which is a part of a recorded plat where the division is to permit the adding of a parcel of land to an abutting lot or to create two lots and the newly created property line will not cause the other remaining portion of the lot to be in violation with this regulation or the Zoning Ordinance, the division may be approved by the City Council after submission of a survey by a registered land surveyor showing the original lot and the proposed subdivision.

4. Nothing herein shall be so construed as to direct or imply that these regulations apply only to residential subdivisions. All subdivisions, be they commercial, industrial, public land use, or otherwise, shall be a subdivision regardless of the proposed land use if falling within the definition of a subdivision as defined herein.

5. No building permit shall be issued for any construction, enlargement, alteration or repair, demolition or moving of any building or structure on any lot or parcel until all the requirements of these regulations have been fully met.

Subd. j. Enforcement

1. Any person or corporation who violates any of the provisions of these regulations, or who sells, leases or offers for sale or lease any lot, block or tract of land herewith regulated before all the requirements of these regulations have been complied with, shall be guilty of a misdemeanor, and upon conviction thereof be subject to fine and/or imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.

2. It is hereby declared to be the intention that the several provisions of this regulation are separable in accordance with the following:

(1) If any court of competent jurisdiction shall adjudge any provision of this regulation to be invalid, such judgment shall not affect any other provision of this regulation not specifically included in said judgment.

(2) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this regulation to a particular property, building, or structure, such judgment shall not affect other property, buildings, or structures.

Subd. k. Effective Date

This ordinance shall become effective May 22, 2008.
CHAPTER 6 – LOCAL IMPROVEMENT POLICY – SPECIAL ASSESSMENTS

SECTION 6.1 LOCAL IMPROVEMENT POLICY.

Sec. 6.1.01. Purpose. The purpose of this Local Improvement Policy is to set forth the policies and procedures for the determination of benefit and the assessment of cost of the various public improvements that are constructed and installed by the City of Staples pursuant to Law, Charter, or order of the City Council. These policies shall serve as a guide for this and future City Councils, for administrative personnel, and as a source of information for all persons concerned with such matters. It is the intent and purpose of these policies to provide for and insure consistent, uniform, fair and equitable treatment, insofar as is practical and possible, of all property owners in regard to the assessment of cost for benefits to property for the various improvements of streets and utilities within the City of Staples.

Sec. 6.1.02. General Statement of Policy. The City Council of the City of Staples hereby declares that these Assessment Policies contained herein are the policies that the City of Staples is dedicated to follow as nearly as possible and practical; and

That new improvement costs shall, whenever possible, be assessed in full against benefited property on a 100% basis; and

That in furtherance of the policy to keep the City’s share of the cost of all improvements to a minimum, that any assessable share of cost against properties or lands outside City limits shall be collected by either voluntary negotiated contract or annexation rather than deferred assessment, if possible.

Sec. 6.1.03. Scope and Limits. These assessment policies are designed to serve only as a general guide for the City Council in allocating benefits to properties for the purpose of defraying the cost of installing public facilities. The Council reserves the right to vary from these policies if the policies act to create obvious inequities, or where the assignment of benefit to a particular property is difficult because of an extreme and unusual situation, which is unlikely to occur in the future, or if such variance is deemed to be in the best interests of the City of Staples.

Sec. 6.1.04. Initiation of Proceedings. The City Council may initiate procedures under this section on its own motion, or by requesting a petition from the affected land owners on petitions furnished by the City.

Sec. 6.1.05. Cut-Off Date for Petitions. No petition for construction of any assessable improvement need be accepted or acted upon by the Council unless it is filed with the City Clerk on or before September 1 of the year prior to the year of requested construction.

Sec. 6.1.06. Eligible Cost for Assessment Proceedings. The City Council shall determine the total cost of the improvement by adding: the amount of contract cost; the cost of labor and materials furnished by the City if not contained in contract costs; the cost of engineering, legal, fiscal and administrative services provided by City staff or other parties; the cost of acquiring property or right-of-way required by the improvement and special
assessments are levied for collection; and any other costs which, in the opinion of the City Council, should be included as part of the total project cost.

Sec. 6.1.07. Storm Sewer. Storm sewer improvements shall be classified as storm sewer trunks and storm sewer laterals. Storm sewer drainage districts shall be prepared by the City Engineer for the various districts and improvements as may be required.

Subd. a. Laterals. New storm sewer laterals, when constructed as an integral part of a street improvement, shall be included in the street improvement project cost and assessed in accordance with the policy for street improvement projects. In the event a storm sewer lateral is constructed without accompanying street improvements, the City may assess 100% of the cost of such improvement against the benefited property included in the improvement district with such cost assessed on either a square foot or linear foot basis.

Subd. b. Trunk Lines. One hundred percent (100%) of the total cost of a new storm sewer trunk improvement shall be assessed against benefited property on an area basis.

Subd. c. Reconstruct. In cases where a bituminous street is being reconstructed and the City Engineer is recommending installation of storm sewer, the City will assume one hundred percent (100%) of the total cost of the storm sewer improvement.

Subd. d. Outside City. If the City installs new storm sewer facilities that benefit property that lies outside the corporate limits, the area and the allocable costs shall be included in the original public hearing for the improvement. The City may attempt to negotiate a contract with the property owner of the property lying outside the City that will provide for payment to the City on the same basis as if the property were within the City and to be assessed for the improvement as a pre-payment upon completion of the project. If such a contract cannot be executed, the City will assume the temporary responsibility for payment of the cost allocable to the property lying outside the City limits. In that event, the original principal amount of the assessment, if it had been assessed, shall be increased annually by interest charged on the project or 7% per year, whichever is greater, up to a maximum of thirty (30) years for which no payment is made. At the time of annexation of the property to the City, a subsequent public hearing may be held for that property and an assessment roll prepared, adopted and certified to the County Auditor, payable at the same rate and terms, except for the total amount, as were applicable to other property owners included in the original assessment. The City Council shall reserve the right to delay the assessment of benefit for facilities previously installed, and to make such assessment at the same time it causes to be constructed other public improvements on the property following its annexation. When property lies outside the City limits, no physical connection to the City’s storm drainage system will be permitted until annexation.

Subd. e. Replacement. When the condition of a storm sewer has deteriorated to the point where excessive maintenance is incurred, or the storm sewer is inadequate, the City Council may elect to replace the storm sewer, and the City shall assume one hundred percent (100%) of the cost of the improvement.
Sec. 6.1.08. Street Paving and Curb and Gutter. One hundred percent (100%) of the cost of the street (paving or any other street improvement) and curb and gutter improvements shall be assessed against benefited property, except as outlined hereafter. The number of front feet assigned to each property shall be the linear footage abutting (or benefited by) the street improvement, determined by measuring at the front of each property the distance between property lines. Streets and alleys abutting the improvement shall be included in the total assessable front footage. Irregular or odd-shaped lots shall be given an average width. This average width shall be determined by using the average of the front and rear widths based on the existing plat.

Subd. a. Corner Lots. Corner lots shall be assessed one hundred percent (100%) of the footage on the short side abutting the improvements and fifty percent (50%) of the footage on the long side abutting the improvement. Twenty-five percent (25%) of the footage on the long side abutting the improvement shall be assessed against all assessable footage abutting the improvement, and the remaining twenty-five percent (25%) of the long side shall be assessed by the City. In cases where a corner lot abuts county and State-owned streets and improvements to said streets have not resulted in assessments to the corner lot, 100% of the improvement shall be assessed to the property abutting the improvement, but if prior improvements of the county and State-owned street has resulted in assessments to the corner lot within 15 years of this improvement, credit towards the new assessment shall be given to the corner lot in accordance with City policy regarding corner lots.

Subd. b. Rate and Term. The cost front foot shall be determined by dividing the total assessable front footage into the total project cost. The cost per front foot of streets and alleys abutting the improvement shall be assumed by the City except for “T” intersections, which shall be divided between the City and the abutting landowner. The term of assessments for street improvements shall be not longer than twenty (20) years, and the Council shall establish an interest rate to be paid on unpaid balances as may be necessary to meet bond principal and interest and other related municipal costs.

Subd. c. Standard Residential Design. Whenever it is necessary for the City to construct a street with a width in excess of 38’, or with an axel load bearing capacity of more than 5 tons in a residential district, it shall be the policy of the City of Staples to assess residential properties only for the costs that would have been incurred had the standard residential street specification been utilized. The City of Staples shall bear the responsibility for any cost exceeding that normal residential cost, except that the City may assign all or a portion of its excess cost to non-residential properties abutting the street, if in the judgment of the City, the existing or projected use of that property required the increased expenditure for the additional street construction requirements.

Subd. d. Reconstruct. When the condition of a street surface has deteriorated to the point where excessive maintenance cost is incurred by the City, or a majority of abutting residents request an improvement, the City Council may order a public hearing on proposed improvements for that street. If the City Council, following the hearing, decided
that improvements are necessary, it may elect to completely reconstruct the street and assess 100% of the total cost of such improvement against abutting property owners in the matter hereinbefore described.

Subd. e. Overlay and Sealcoating. The City may resurface or “overlay” or sealcoat the street in accordance with the recommendation of the City Engineer. In this event, the City shall assume 100% of the total cost of such minor improvement.

Subd. f. Undeveloped Platted Streets. Whenever it is necessary to develop a platted street in the corporate limits, it shall be the policy of the City of Staples to assume the normal costs of construction and graveling, except in cases where extraordinary work is required and unusual costs are incurred as determined by the City Engineer. Such costs shall include, but are not limited to, removing inadequate subgrade material, fill dirt, preparing subgrade and culverts. These costs shall be assessed 100% to the benefiting properties.

Sec. 6.1.09. Sidewalks and Driveways. All costs for installing sidewalk and driveway facilities shall be assessed against abutting properties based on a square footage formula. It shall be the responsibility of the abutting property owner to keep sidewalk facilities in good condition, and if major repair or replacement of a section of sidewalk shall become necessary, the City may cause the improvement to be made and shall assess all costs against the affected property owner, with such assessments to be paid on such terms as prescribed by the Council. If such sidewalk repair becomes necessary due to conditions beyond the control of the homeowner, (e.g. damage to sidewalk by City Contract work, routing City maintenance operation work by public or private utilities, etc. -- but does not include damage to public sidewalk resulting from tree roots), the City may at its discretion, pay or cause to be paid, either part of or the entire cost of such repair or replacement.

Sec. 6.1.10. Sanitary Sewer and Watermain – Trunk Lines. Water and sanitary sewer facilities that represent new service to areas previously without City utility service shall be assessed at the rate of one hundred percent (100%) of their cost of installation against benefited property. The maximum length of any assessment shall be thirty (30) years, but the City Council may, at its discretion, designate a shorter term. Interest shall be charged on unpaid special assessments at a rate necessary to meet bond principal and interest and other related municipal costs.

Subd. a. Sanitary Sewer. In the event oversized or trunk lines, 10” or larger in residential areas, are required in an area but are necessary to provide adequate service and capacity for areas beyond the specific area in question, then and in this event, the share of cost in excess of lateral benefits, shall be assumed by the City. This policy, however, shall not prevent the City from assessing special benefits or creating special sanitary sewer trunk line assessment districts, if deemed advisable and proper in any particular situation. The City presently has the Industrial Park and Northeast Sanitary Sewer Interceptor Districts.
**Subd. b. Watermain.** In the event that oversized or trunk lines, 8” or larger, are required for distribution purposes as determined by the City Engineer in a particular area, and that benefits for said trunk or oversized portion of the cost are applicable to more than the area or development under consideration, then such oversize or trunk line share of this cost shall be assumed by the City. This share of cost, the excess of lateral benefits shall be determined by the City Engineer.

If a trunk or oversized line is required because of fire demand or supply and is not required for distribution purposes, such trunk or oversized line cost shall be either assessed against benefited property as special benefits or otherwise financed by the City. In the event there is a request to connect to the facilities after the water and sewer facilities are installed, and the property benefited was not assessed for those facilities originally, the property owner has access to the facility without the mains being extended adjacent to the benefiting property, the property benefited shall be subject to an assessment before connection. The assessable footage, cost per foot, rates and terms shall be determined as described in Subd. c. below.

**Subd. c. Outside City.** Any project, whether the project is partially or fully funded by a grant to the City that benefits property outside the corporate limits, shall be assessed to benefiting properties upon annexation. The City may attempt to negotiate a contract with the property owner of the property lying outside the City that will provide for payment to the City on the same basis as if the property were within the City and to be assessed for the improvement as a prepayment upon completion of the project. If such a contract cannot be executed, the City will assume the temporary responsibility for payment of the cost allocable to the property lying outside the City limits. In that event, the original principal amount of the assessment, if it had been assessed, shall be increased annually by simple interest charged on the project up to a maximum of thirty (30) years for which no payment is made. At the time of annexation of the property to the City, if the City’s records do not properly indicate the amount of the assessment to the property to be annexed, a subsequent public hearing may be held for that property and an assessment roll prepared, adopted and certified to the County Auditor. The interest rate shall be as specified in the original project, and the term for payment shall extend for the remaining term of the project, or for 15 years, whichever is longer, even if the 15-year period extends beyond the original term of the project. In determining the amount of the assessment at the time of annexation, the interest accrued shall be added to the original principal amount of the assessment (as if it had been assessed). If, however, the original principal amount cannot be determined by the City Clerk’s office, the assessment shall be the cost per foot of the most recent water and/or sewer project payable at the same rate and terms as the most recent project. No physical connection to the City’s sanitary sewer or watermain trunk line and laterals will be permitted until annexation, including satisfaction of costs or assessments, is executed. Notwithstanding the foregoing, there shall be no assessment to property being annexed regarding watermains that were constructed pursuant to the earlier City policy in which there were no assessments for watermain construction.
Southside Neighborhood Improvement Project Excepted. Notwithstanding the foregoing provisions, in the event that property is annexed to the City that is covered by the Southside Neighborhood Improvement Project (HUD Grant), the assessment to the annexed property as determined by the City Clerk shall be reduced by one-half (1/2), and the assessment shall be amortized over seven (7) years from the date of the annexation. The amount of the assessment shall be agreed upon between the City and the property owner prior to annexation.

Sec. 6.1.11. Sanitary Sewer & Watermain, Laterals and Service Lines.

Subd. a. One hundred percent (100%) of the cost of new water and sewer lateral improvements including mains and service lines shall be assessed against benefiting properties.

Subd. b. Replacement.

1. Trunks and Laterals: When the condition of the water and sewer facilities (trunks and laterals) have deteriorated to the point where excessive maintenance is incurred or where the facilities are inadequate, the City Council may elect to replace the sewer and water facilities, and if so, the City of Staples shall assume one hundred percent (100%) of the cost of the improvement.

2. Service Lines: If the condition of the service lines as determined by the City Engineer are deteriorated, obsolete or inadequate, the lines shall be replaced at the same time as the other street improvements and/or water and sewer facilities. One hundred percent (100%) of the cost of the service lines shall be assessed to the benefiting property.

Sec. 6.1.12. Federal, State and County Aid Use. If the City receives financial assistance from the Federal government, the State, or the county to defray a portion of the cost of a street improvement project, such aid shall be used first to reduce the share of the project cost that would be met from general City funds according to the assessment formula contained in this Code. If such aid is more than the amount of the improvement cost to be borne by the City, the remainder of the aid so received shall be used to reduce each individual assessment proportionately. Notwithstanding any provisions of Section 6.1.01 through 6.1.11 with respect to percentage of cost being assessed against benefiting properties or assumed by the City of Staples, in the event that any part of the cost of an improvement is paid from county State aid highway funds, the municipal State aid street fund, or the trunk highway fund, the City may assess at least 20% of the cost of any such improvement upon the property benefited by the improvement.

Sec. 6.1.13. Deferment of Special Assessments for Senior Citizens.

Subd. a. When Deferred. The Council may defer the payment of any special assessments on homestead property owned by a person who is 65 years of age or older and has an annual income of $5,000.00 or less. The deferment shall be granted upon a
certification by the owner on a form prescribed by the County Assessor supplemented by
the City Clerk to establish the qualification of the owner for such deferment. The
application shall be made within 30 days after the adoption of the assessment roll by the
Council and shall be renewed each following year upon the filing of a similar application
not later than September 30. The Council shall either grant or deny the deferment, and if
it grants the deferment, it may require the payment of the interest due each year. If the
Council grants the deferment, the Clerk shall notify the County Auditor of that fact.

Subd. b. When Deferment Ends. The option to defer the payment of special
assessments shall terminate and all amounts accumulated plus applicable interest shall
become due upon the occurrence of any one of the following events:

1. The death of the owner when there is no spouse who is eligible for deferment;
2. The sale, transfer, or subdivision of all or any part of the property;
3. Loss of homestead status on the property;
4. Determination by the Council for any reason that there would be no hardship to
   require immediate or partial payment; or
5. Failure to file a renewal application within the time prescribed by Subdivision a.

Subd. c. Procedure for Termination. Upon the occurrence of one of the events
specified in Subdivision b., the Council shall terminate the deferment. Thereupon, the
City Clerk shall notify the County Assessor and the County Auditor of the termination,
including the amounts accumulated on unpaid installments, plus applicable interest that
shall become due and payable as a result of the termination.

Sec. 6.1.13.A. Deferment of Special Assessments for Certain Improvements.

Subd. a. A three (3) year deferment shall be allowed for the following improvements:
water and sanitary sewer facilities, storm sewer facilities (if required by the City), and
curb and gutter construction. In the event that a deferment is granted, bituminous
surfacing shall be required within one year after installation of underground facilities,
with no deferment provided on the bituminous surfacing.

Subd. b. To obtain the three (3) year deferment, the subdivider/developer is required to
engage a registered land surveyor to prepare a final plat of the area that is being proposed
to be subdivided, which plat shall provide for adequate drainage, and which plat shall
provide for at least five (5) platted lots.

Subd. c. No interest will be charged during the 3-year deferment period.

Subd. d. In the event that a lot is sold or a building permit is issued, the deferred
payment of assessment no longer applies for that specific lot, and the improvements are
immediately assessed against the benefiting property.
Sec. 6.1.14. Branch Service Lines. Water and sewer lines shall be installed from the main to the front property line of property to be served before any permanent street surfacing is constructed in the street. If any property owner fails to put in such water and sewer service lines within 30 days after notice from the City Clerk, the City Council may proceed to have water and sewer service installed and to assess the cost against the property.

Sec. 6.1.15. Partial Prepayment. After the adoption by the City Council of the assessment roll in any local improvement proceeding, the owner of any property specially assessed in the proceeding may, prior to the certification of the assessment or the first installment to the County Auditor, pay to the City Treasurer any portion of the assessment not less than $100.00. The remaining unpaid balance shall be spread over the period of time established by the Council for installment payment of the assessment.

Sec. 6.1.16. Certification of Assessments. After the adoption of any special assessment by the Council, the Clerk shall transmit a certified duplicate of the assessment roll with each installment, including interest, set forth separately to the County Auditor to be extended on the proper tax lists of the County.

Sec. 6.1.17. Permanent Improvement Revolving Fund.

Subd. a. Establishment. There is hereby established a permanent improvement revolving fund of the City to be held and administered by the City Clerk, separate and apart from all other funds of the City, for the purpose of financing local improvements.

Subd. b. Source of Funds. The fund shall be a permanent fund of the City, and the moneys necessary for its maintenance shall be provided by taxation, by the appropriation of available moneys from other funds of the City, and/or by the issuance and sale of permanent improvement revolving fund bonds of the City as deemed necessary from time to time by the Council.

Subd c. Disposition of Funds. Moneys in the fund shall be used only as directed by resolution of the Council for the purpose of advancing to local improvement funds the cost of improvements for which assessments are to be levied. All such moneys so advanced to an improvement fund shall be restored as soon as sufficient moneys are received in the improvement fund, together with interest at a rate fixed by the Council at not less than 6 percent per annum during the time for which such moneys have been so furnished.

Subd. d. Investment. Whenever there are moneys in the fund not immediately needed for local improvements, such moneys shall be invested by the Administrator under the direction of the Council in any securities authorized for investment of municipal sinking funds by law.

Subd. e. Transfer of Surplus. When the fund accumulates encumbered moneys in excess of any amounts reasonably anticipated to be needed for local improvement fund
advanced, the Council may, by resolution adopted by a four-fifths vote, declare any part of such excess to be surplus and transfer it to the general fund.
CHAPTER 7 – LIQUOR AND NON-INTOXICATING MALT LIQUOR

SECTION 7.1 INTOXICATING LIQUOR.

Sec. 7.1.01. Provisions of State Law Adopted. The provisions of Minnesota Statutes, Chapter 340A, relating to the definition of terms, licensing, consumption, sales, conditions of bonds of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution and consumption of intoxicating liquor are adopted and made a part of this Code as if set out in full.

Sec. 7.1.02. License Required.

Subd. a. General Requirement. No person, except a wholesaler or manufacturer to the extent authorized under State license, shall directly or indirectly deal in, sell, or keep for sale in the City any intoxicating liquor without a license to do so as provided in this Code. Liquor licenses shall be of four kinds: “on-sale,” “on-sale” wine, “off-sale,” and club licenses.

Subd. b. On-Sale Licenses. “On-sale” licenses shall be issued only to hotels, clubs, restaurants, theaters and exclusive liquor stores and shall permit “on-sale” of liquor only.

Subd. c. On-Sale Wine Licenses. “On-sale” wine licenses, with the approval of the Commissioner of Public Safety, shall be issued only to restaurants meeting the qualifications of Minn. Stat. § 340A.404, Subd. 5, as it may be amended from time to time and to theaters that meet the criteria of Minn. Stat. § 340A.404, Subd. 1(b) as it may be amended from time to time, and shall permit the sale of wine not exceeding 14 % alcohol by volume, for consumption on the licensed premises only. In the case of restaurants only, the sale of wine must occur in conjunction with the sale of food. The holder of an on-sale wine license who also holds an on-sale 3.2% malt liquor license is authorized to sell malt liquor with a content over 3.2% (strong beer) without an additional license.

Subd. d. Off-Sale Licenses. “Off-sale” licenses shall be issued only to drug stores and exclusive liquor stores and shall permit “off-sales” of liquor only.

Subd. e. Special Club Licenses. Special club licenses shall be issued only to incorporated clubs that have been in existence for 15 years or more or to congressionally chartered veterans’ organizations that have been in existence for 10 years.

Sec. 7.1.03. Application for License.

Subd. a. Form. Every application for a license to sell liquor shall state the name of the applicant, his age, representations as to his character, with such references as the Council may require, his citizenship, the type of license applied for, the business in connection with which the proposed license will operate, whether the applicant is owner and operator of the business, how long he/she has been in that business at that place, and such other
information as the Council may require from time to time. The applicant shall also describe the location of the business by address and legal description, and shall also submit proof of ownership or lease. In addition to containing such information, the application shall be in the form prescribed by the Commissioner of Public Safety and shall be verified and filed with the City Clerk. No person shall make a false statement in an application.

Subd. b. Liability Insurance. Prior to the issuance of a liquor license, the applicant shall file with the City Clerk a liability insurance policy in the minimum amount of $100,000.00 coverage for one person and $300,000.00 coverage for more than one person, and shall comply with the provisions of Minn. Stat. § 340A.409 relating to liability insurance policies. It is not intended that liability insurance as used in this subdivision include dram shop (liquor liability) insurance until such time as Minnesota law requires that dram shop (liquor liability) insurance be obtained prior to issuance of a liquor license.

Subd. c. Approval of Security. The security offered under Subdivision b. shall be approved by the City Council, and in the case of applicants for “on-sale” wine licenses and “off-sale” licenses, by the State Commissioner of Public Safety. Surety bonds and liability insurance policies shall be approved as to form by the City Attorney. Operation of a licensed business without having on file with the City at all times effective security as required in Subdivision b. is a cause for revocation of the license.

Sec. 7.1.04. License Fees.

Subd. a. Fees. The license fees for all liquor licenses under this section shall be those amounts as established by resolution of the City Council and on file in the City offices.

Subd. b. Payment. Payment in full of the license fee and the fixed investigation fee required under Sec. 7.1.05, Subd. a. (if any) shall be made before any license is issued.

Subd. c. Term, Pro Rata Fee. Each license shall be issued for a period of one year, except that if the application is made during the license year, a license may be issued for the remainder of the year for a pro rata fee, with any unexpired fraction of a month being counted as one month. Every license shall expire on the last day of June.

Subd. d. Refunds. No refund of any fee shall be made except as authorized by statute.

Sec. 7.1.05. Granting of Licenses.

Subd. a. Preliminary Investigation. On an initial application for an “on-sale” license and on application for transfer of an existing “on-sale” license, the applicant shall pay with his application an investigation fee of $50.00, and the City shall conduct a preliminary background and financial investigation of the applicant. If the actual cost of the investigation exceeds $50.00, the applicant shall pay the additional amount prior to issuance of a license, but the fee shall not exceed $500.00 in an in-state investigation. The
application in such case shall be made on a form prescribed by the State Bureau of Criminal Apprehension and contain such additional information as the Council may require. If the Council deems it in the public interest to have an investigation made on a particular application for renewal of an “on-sale” license, it shall so determine. If the Council determines that a comprehensive background and investigation of the applicant is necessary, it may conduct the investigation itself or contract with the Bureau of Criminal Investigation for the investigation. No license shall be issued, transferred or renewed if the results show to the satisfaction of the Council that issuance would not be in the public interest. If an investigation outside the State is required, the applicant shall be charged the actual cost not to exceed $10,000.00. The fee, after deducting any initial investigation fee already paid, shall be payable by the applicant whether or not the license is granted.

**Subd. b.** Hearing and Issuance. The City Council shall investigate all facts set out in the application and not investigated in the preliminary background and financial investigation conducted pursuant to Subdivision a. 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 discretion, grant or refuse the application. No “on-sale” wine license or “off-sale” licenses shall become effective until it, together with the security furnished by the applicant, has been approved by the Commissioner of Public Safety.

**Subd. c.** Person and Premises Licensed - Transfer. Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without City Council approval. Any transfer to stock of a corporate licensee is deemed a transfer of the license and a transfer of stock without prior Council approval is a ground for revocation of the license.

**Sec. 7.1.06. Persons Ineligible for License.** No license shall be granted to any person made ineligible for such a license by State law.

**Sec. 7.1.07. Places Ineligible for License.**

**Subd. a.** General Prohibition. No license shall be issued for any place or any business ineligible for such a license under State law.

**Subd. b.** Delinquent Taxes and Charges. No license shall be granted for operation on any premises on which taxes, assessments, utilities or other financial claims of the City are delinquent and unpaid.

**Sec. 7.1.08. Conditions of License.**

**Subd. a.** In General. Every license is subject to the conditions in the following subdivisions and all other provisions of this Code and of any other applicable ordinance, State law or regulation.
Subd. b. Licensee’s Responsibility. Every licensee is responsible for the conduct of his place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises authorized to sell intoxicating liquor there is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this Code and the law equally with the employee.

Subd. c. Inspections. Every licensee shall allow any peace officer, health officer, or properly designated officer or employee of the City to enter, inspect and search the premises of the licensee during business hours without a warrant.

Subd. d. Display During Prohibited Hours. No “on-sale” establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

Subd. e. Closing of Business Establishments. All persons holding a license for the sale of intoxicating liquors in the City shall completely close their business establishments and remove all persons from said business establishments between the hours of 1:30 a.m. and 6:00 a.m. on every day of the week.

Subd. f. Entering Liquor Establishments by Persons Under 21 Years of Age. No persons under 21 years of age shall be allowed in any establishment in the City where intoxicating liquors are sold, unless said person under 21 years of age is accompanied by his or her natural parent or court-appointed guardian, or unless said person is employed by the establishment and is at least 18 years of age, or unless said person is in the establishment in order to consume meals, or unless said person is attending a social function that is held in a portion of the establishment where liquor is not sold.

Subd. g. Federal Stamps. No licensee shall possess a federal wholesale liquor dealer’s special tax stamp or a federal gambling stamp.

Subd. h. In addition to any criminal penalties assessed against a licensee due to illegal liquor sales, the following civil penalties may also be assessed against a licensee:

1. Upon a first conviction of an illegal sale, and following notice from the City and a hearing in front of the City Council, and upon such determination by the City Council, the licensee shall pay a license penalty of $100.00 to the City, and any liquor licenses of the licensee shall be suspended for two consecutive business days within 20 days after the decision of the City Council.

2. Upon another conviction of an illegal sale within two years of the first conviction, and following notice from the City and a hearing in front of the City Council, and upon such a determination by the City Council, the licensee shall pay a license penalty of $250.00 to the City, and any liquor licenses of the licensee shall be suspended for five consecutive business days within 20 days after the decision of the City Council.
3. Upon another conviction of an illegal sale within two years of the second conviction, and following notice from the City and a hearing in front of the City Council, and upon such a determination by the City Council, the licensee shall pay a license penalty of $500.00 to the City, and any liquor licenses of the licensee shall be suspended for twelve consecutive business days within 20 days after the decision of the City Council.

Sec. 7.1.09. Restrictions on Purchase and Consumption.

Subd. a. Liquor in Unlicensed Places. No person shall mix or prepare liquor for consumption in any public place or place of business unless it has a license to sell liquor “on-sale” or a permit from the Commissioner of Public Safety under Minn. Stat. § 340A.414, and no person shall consumer liquor in any such place.

Subd. b. Consumption in Public Places. No person shall consume liquor on a public highway, public park or other public place.

Sec. 7.1.10. Suspension and Revocation. The Council may either suspend for not to exceed 60 days or revoke any liquor license upon a finding that the licensee has failed to comply with any applicable statute, regulation, or ordinance relating to intoxicating liquor. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to Minn. Stat. §§ 14.57 through 14.69.

Sec. 7.1.11. Sale of Intoxicating Liquor on Sundays.

Subd. a. A restaurant, club, bowling center, or hotel with a seating capacity of at least 30 persons and that 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 12:00 noon on Sundays and 1:00 a.m. on Mondays.

Subd. b. An establishment serving intoxicating liquor must obtain a Sunday intoxicating liquor license from the City of Staples, which license shall be issued for a period of one year, for a license fee of $200.00.

Subd. c. Sunday intoxicating liquor licenses issued to an applicant shall be in accordance with Minn. Stat. § 340A.504.

SECTION 7.2 3.2 PERCENT MALT LIQUOR.

Sec. 7.2.01. Provisions of State Law Adopted. The provisions of Minnesota Statutes, Chapter 340A, are adopted and make a part of this Code as if set out in full with respect to 3.2 percent malt liquor.

Sec. 7.2.02. Definition of Terms.
Subd. a. Beer. As used in this Code, “beer” or “3.2 percent malt liquor” means any malt beverage with an alcoholic content of not less than one-half of one percent alcohol by volume nor more than three and two-tenths percent alcohol by weight.

Subd. b. Beer Store. “Beer store” means an establishment for the sale of beer, cigars, cigarettes, all forms of tobacco, beverages and soft drinks at retail.

Sec. 7.2.03. License Required.

Subd. a. Licenses. No person, except wholesalers and manufacturers to the extent authorized by law, shall deal in or dispose of by gift, sale or otherwise, or keep or offer for sale, any beer within the City without first having received a license as hereinafter provided. Licenses shall be of three kinds:

1. Regular “on-sale;”
2. Temporary “on-sale;” or

Subd. b. Regular On-sale. Regular “on-sale” licenses shall be granted only to bona fide clubs, beer stores, exclusive “on-sale” liquor stores, restaurants and hotels where food is prepared and served for consumption on the premises. “On-sale” licenses shall permit the sale of beer for consumption on the premises only.

Subd. c. Temporary On-Sale. Temporary “on-sale” licenses shall be granted only to bona fide clubs and charitable, religious and non-profit organizations for the sale of beer for consumption on the premises only.

Subd. d. Off-sale. “Off-sale” licenses shall permit the sale of beer at retail, in the original package for consumption off the premises only.

Sec. 7.2.04. License Applications. Every application for a license to sell beer shall be made to the City Clerk on a form supplied by the City and containing such information as the Clerk or the City Council may require. It shall be unlawful to make any false statement in an application.

Sec. 7.2.05. License Fees.

Subd. a. Payment Required. Payment in full of the license fee and the fixed investigation fee required under Sec. 7.1.05, Subd. a (if any) shall be made before any license is issued.

Subd. b. Expiration; Pro Rata Fees. Every license except a temporary license shall expire on the last day of June in each year. Each license, except a temporary license, shall be issued for a period of one year, except that if a portion of the license year has elapsed when the license is granted, the license shall be issued for the remainder of the year for a pro rata fee. In computing such fee, any unexpired fraction of a month shall be counted as
one month. A temporary license shall be issued for a specific period in which a special
event to which the sale is incident is being held, and such period shall be stated on the
license.

**Subd. c. Fees.** The license fees for all liquor licenses under this section shall be those
amounts as established by resolution of the City Council and on file in the City offices.

**Subd. d. Refunds.** No part of the fee paid for any license issued under this Code shall
be refunded except in the following instances upon application to the Council within 30
days from the happening of the event. There shall be refunded a pro rata portion of the
fee for the unexpired period of the license, computed on a monthly basis, when operation
of the licensed business ceases not less than one month before expiration of the license
because of:

1. Destruction or damage of the licensed premises by fire or other catastrophe;
2. The licensee’s illness;
3. The licensee’s death; or
4. A change in the legal status of the municipality making it unlawful for the
   licensed business to continue.

**Sec. 7.2.06. Granting of License.**

**Subd. a. Investigation and Hearing.** The City Council shall investigate all facts set out
in the application. Opportunity shall be given to any person to be heard for or against the
granting of the license. After such investigation and hearing, the Council shall grant or
refuse the application in its discretion.

**Subd. b. Transfers.** Each license shall be issued to the applicant only and shall not be
transferable to another holder. Each license shall be issued only for the premises
described in the application. No license may be transferred to another place without the
approval of the Council.

**Sec. 7.2.07. Persons Ineligible for License.** No license shall be granted to any person
made ineligible for such a license by State law.

**Sec. 7.2.08. Places Ineligible for License.**

**Subd. a. Conviction or Revocation.** No license shall be granted for sale on any
premises where a licensee has been convicted of the violation of this Code, or of the State
beer or liquor law, or where any license hereunder has been revoked for cause until one
year has elapsed after such conviction or revocation.

**Sec. 7.2.09. Conditions of License.**
Subd. a. General Conditions. Every license shall be granted subject to the conditions in the following subdivisions and all other provisions of this Code and of any other applicable ordinance of the City or State law.

Subd. b. Interest of Manufacturers or Wholesalers. No manufacturer or wholesaler of beer shall have any ownership of or interest in an establishment licensed to sell at retail contrary to the provisions of Minn. Stat. § 304A.301. No retail licensee and manufacturer or wholesaler of beer shall be parties to any exclusive purchase contract. No retail licensee shall receive any benefits contrary to law from a manufacturer or wholesaler shall confer any benefits contrary to law upon a retail licensee.

Subd. c. Liquor Dealer’s Stamp. No licensee shall sell beer while holding or exhibiting in the licensed premises a federal retail liquor dealer’s special tax stamp unless he/she is licensed under the laws of Minnesota to sell intoxicating liquors.

Subd. d. Sales of Intoxicating Liquor. No licensee who is not also licensed to sell intoxicating liquor and who does not hold a consumption or display permit shall sell or permit the consumption and display of intoxicating liquors on the licensed premises or serve any liquids for the purpose of mixing with intoxicating liquor. The presence of intoxicating liquors on the premises of such a licensee shall be prima facie evidence of possession of intoxicating liquors for the purpose of sale; and the serving of any liquid for the purpose of mixing with intoxicating liquors shall be prima facie evidence that intoxicating liquor is being permitted to be consumed or displayed contrary to this Code.

Subd. e. Searches and Seizures. Any peace officer may enter, inspect and search the premises of a licensee during business hours without a search and seizure warrant and may seize all intoxicating liquor found on the licensed premises in violation of Subdivision d.

Subd. f. Licensee Responsibility. Every licensee shall be responsible for the conduct of his place of business and shall maintain conditions of sobriety and order.

Subd. g. In addition to any criminal penalties assessed against a licensee due to illegal 3.2 percent malt liquor (beer) sales, the following civil penalties may also be assessed against licensee:

1. Upon a first conviction of an illegal sale, and following notice from the City and a hearing in front of the City Council, and upon such a determination by the City Council, the licensee shall pay a license penalty of $100.00 to the City, and any 3.2 percent malt liquor (beer) licenses of the licensee shall be suspended for two consecutive business days within 20 days after the decision of the City Council.

2. Upon another conviction of an illegal sale within two years of the first conviction, and following notice from the City and a hearing in front of the City Council, and upon such a determination by the City Council, the licensee shall pay a license penalty of $250.00 to the City, and any 3.2 percent malt liquor (beer) licenses of the licensee shall be suspended for five consecutive business days within 20 days after the decision of the City Council.
3. Upon another conviction of an illegal sale within two years of the second conviction, and following notice from the City and a hearing in front of the City Council, and upon such a determination by the City Council, the licensee shall pay a license penalty of $500.00 to the City, and any 3.2 percent malt liquor (beer) licenses of the licensee shall be suspended for twelve consecutive business days within 20 days after the decision of the City Council.

Sec. 7.2.10. Revocation. The violation of any provision or condition of this Code by a beer licensee or his agent is ground for revocation or suspension of the license. The license of any person who holds a federal retail liquor dealer’s special tax stamp without a license to sell intoxicating liquors at such place shall be revoked without notice and without hearing. In all other cases, a license granted under this ordinance may be revoked or suspended by the Council in accordance with other licensing provisions of this Code. (see Section 7.1.10).

Sec. 7.2.11. Any licenses issued pursuant to Minnesota law or the Staples City Code for selling “on-sale” 3.2 percent malt liquor or set-ups (consumption and display) on Sunday shall be limited to establishments that are hotels or restaurants or clubs as defined in Minn. Stat. § 430A.101 and that have facilities for serving not less than 30 guests at one time, and that serve 3.2 percent malt liquor or set-ups in conjunction with the serving of food.

SECTION 7.3 NUDITY ON THE PREMISES OF LICENSED LIQUOR ESTABLISHMENTS PROHIBITED

Sec. 7.3.01. Purpose. The City of Staples hereby ordains that it is in the best interests of the public health, safety and general welfare of the people of this city that certain types of activities are prohibited as provided in this section upon the premises of licensed liquor, wine and 3.2 malt liquor establishments so as to best protect and assist the owners and operators and employees of these premises, as well as patrons and the public in general. The City also finds that the standard set forth in this section reflects the prevailing community standards of the City. The provisions of this section are intended to prevent harm stemming from the physical immediacy and combination of alcohol, nudity and sex. The City also intends to prevent any subliminal endorsement of sexual harassment or activities likely to lead to the possibility of criminal conduct, including prostitution, sexual assault and disorderly conduct.

Sec. 7.3.02. Nudity Prohibited on Premises.

It is unlawful for any liquor licensee to permit or allow any person or persons on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material.

Sec. 7.3.03. Penalty.

A violation of this section is a misdemeanor and is justification for revocation or suspension of any liquor, wine or 3.2 malt beverage license.
CHAPTER 8 – TRAFFIC AND MOTOR VEHICLES

SECTION 8.1 DEFINITIONS. Any term used in this chapter and defined in Minn. Stat. § 169.01 has the meaning given it by that section.

SECTION 8.2 TRAFFIC REGULATIONS.

Sec. 8.2.01. Restriction on Turns. The Council by resolution may, whenever necessary to preserve a free flow of traffic or to prevent accidents, designate any intersection as one where the turning of vehicles to the left or to the right, or both, is to be restricted at all times or during specified hours. The proper City officials shall mark by appropriate signs any intersection so designated. No intersection on a trunk highway shall be so designated until the consent of the Commissioner of Transportation to such designation is first obtained. No person shall turn a vehicle at any such intersection contrary to the directions on such signs.

Sec. 8.2.02. U-Turns. No person shall turn a vehicle so as to reverse its direction on any street in the business district or at any intersection where traffic is regulated by a traffic control signal or “No U-Turn Signs.”

Sec. 8.2.03. Through Streets; One-Way Streets. The Council by resolution may designate any street or portion of street as a through highway or a one-way roadway where necessary to preserve the free flow of traffic or to prevent accidents. The proper City officials shall post appropriate signs at the entrance to such street. No trunk highway shall be so designated unless the consent of the Commissioner of Transportation to such designation is first secured.

Sec. 8.2.04. Speed Limit in School Zones. School speed limit zones may be established on City streets pursuant to resolutions adopted by the Council. Upon the erection of appropriate signs designating the beginning and ending of such speed limit zones, no person shall drive a vehicle within the zones designated by this section in excess of the posted speed limit, and the speed limit zones shall be in effect for all hours.

Sec. 8.2.05. Truck Restrictions. The City Council by resolution may designate streets on which travel by commercial vehicles in excess of a designated number of pounds gross weight is prohibited. The proper City officials shall erect appropriate signs on such streets. No person shall operate a commercial vehicle on such posted streets in violation of the restrictions stated.

Sec. 8.2.06. Seasonal Weight Restrictions. The proper City officials may prohibit the operation of vehicles upon any street under their jurisdiction or impose weight restrictions on vehicles to be operated on such street whenever the street, by reason of deterioration, rain, snow or other climatic conditions, will be seriously damaged or destroyed unless the use of vehicles on the street is prohibited or the permissible weights thereof reduced. They shall erect and maintain signs plainly indicating the prohibition or restriction at each end of that portion of the street affected. No person shall operate a vehicle on a posted street in violation of the prohibition or restriction.
Sec. 8.2.07. Parking Regulations.

Subd. a. Angle and Parallel Parking. The Council may, by resolution, designate certain streets in which angle parking shall be required. On any such street, every vehicle parked shall be parked with the front of the vehicle facing the curb or the edge of the traveled portion of the street at an angle and facing between the painted or other markings on the curb or street indicating the parking space. Angle parking shall be at a 45 degree angle to the curb. On all other streets, cars shall be parked parallel to the curb or edge of the roadway in accordance with law.

Subd. b. No Parking, Stopping or Standing Zones. The City Council may, by resolution, designate certain streets or portions of streets as “no parking” or “no stopping or standing” zones and may limit the hours in which the restrictions apply. The proper City officials shall mark by appropriate signs each zone so designated. Except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or a traffic control device, no person shall stop or park a vehicle in an established “no stopping or standing” zone when stopping or standing is prohibited. No vehicle shall be parked in a “no parking” zone during hours when parking is prohibited, except that a vehicle may be parked temporarily in such zone for the purpose of forming a funeral procession, and a truck may be parked temporarily between the hours of 8:00 a.m. and 5:00 p.m. of any business day for the purpose of loading or unloading where access to the premises is not otherwise available.

Subd. c. Time Limit Parking Zones. The City Council may, by resolution, designate certain areas where the right to park is limited during hours specified. The proper City officials shall mark by appropriate signs each zone so designated. During the hours specified on the sign, no person shall park a vehicle in any limited parking zone for a longer period than is so specified.

Subd. d. General Time Limits.

1. From October 1 to May 1 of each year, no vehicle shall be parked upon any street or avenue between the hours of 12:00 midnight and 7:00 a.m. at the following locations:
   a. On the side of the street or avenue bearing odd-numbered U.S. Post Office addresses on every even-numbered date; and
   b. On the side of the street or avenue bearing even-numbered U.S. Post Office addresses on every odd-numbered date.

2. From May 1 to October 1 of each year, no vehicle shall be parked upon any street or avenue in any one place for a longer continuous period than 24 hours.

Sec. 8.2.08. Truck Zones, Loading Zones, Etc.

Subd. a. Establishment. The City Council may, by resolution, establish spaces in streets as loading zones. The hours of 8:00 a.m. to 5:00 p.m. of any day except Sundays,
New Year’s Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day or such other time as the City Council may specify in the resolution establishing the zone shall be the loading zone hours. The proper City officials shall mark each such zone by appropriate signs.

Subd. b. Loading Zone Prohibitions. During loading zone hours, no person shall stop, stand or park any vehicle in a loading zone except to receive or discharge passengers or freight and then only for a period no longer than is necessary for the purpose. No person shall occupy a loading zone with a vehicle other than a truck for more than five minutes during such hours.

Subd. c. Property Owner Initiative. Any person desiring the establishment of a loading zone abutting premises occupied by him/her shall make written application therefore to the City Council. If the Council grants the request, the proper City officer shall bill the applicant for the estimated cost of placing signs and of painting the curb. When the amount is paid to the City Clerk, the proper City official shall install the necessary signs and paint the curb.

Subd. d. No Truck Parking Zones. The Council may, by resolution, establish “No Truck Parking” zones in the business district and the proper City officials shall mark by appropriate signs any zones so established. Such zones shall be established in the business district where heavy traffic by trucks or other traffic congestion makes parking by trucks a hazard to the safety of vehicles or pedestrians. No person shall park a truck of more than one-ton capacity between 8:00 a.m. and 5:00 p.m. on any week day upon any street in any such zone, but parking of such vehicle for a period of not more than 30 minutes shall be permitted in such zone for the purpose of having access to abutting property when such access cannot conveniently be secured otherwise.

Sec. 8.2.09. Semi-Trailer Parking.

Subd. a. No semi-trailer shall be parked upon any street in a residential area in the City of Staples. This regulation shall apply to a tractor-trailer or to the tractor or the trailer if the tractor-trailer has been separated.

Subd. b. No tractor-trailer (semi-trailer type), or tractor, if separated from the tractor-trailer, shall be parked with its engine running in a residential area in the City of Staples for a time period of more than 15 minutes.

Subd. c. Exception. Subdivisions a. and b. of this section shall not apply to any tractor-trailer that is being loaded or unloaded, provided that such loading or unloading does not exceed the time of 2 hours. Subdivisions a. and b. herein shall also not apply to any vehicles that are disabled, as long as such disability does not exceed 48 hours.
Sec. 8.2.10.  Bus Stops and Taxi Stands.

Subd. a.  Designation. The City Council, by resolution, may designate spaces on streets in the City where vehicles engaged in carrying passengers for hire shall stand or park. The proper City official shall mark by appropriate sign any bus stop or taxi stand so established.

Subd. b.  Parking Restrictions. Except for the purpose of loading or unloading passengers, no driver of any vehicle other than a bus shall stand or park at a bus stop, and no driver of any vehicle other than a taxicab shall stand or park in a taxi stand.

Subd. c.  Bus and Taxi Parking. No driver of any bus shall stand or park the bus upon any street except at a bus stop. Except for the purpose of loading or unloading passengers or for a reasonable time while on personal errands, no driver of any taxicab shall stand or park upon any street except at a taxi stand.

Sec. 8.2.11.  Repealed.

Sec. 8.2.12.  Establishment of Safety Zones, Lanes of Traffic, Etc. To assist in the direction and control of traffic, to improve safe driving conditions at any intersection or dangerous location, and to warn pedestrians or drivers of motor vehicles of dangerous conditions or hazards, the proper City officials may establish safety zones, lanes of traffic, and stop intersections, and they may order installation of stop signs, yield signs, warning signs, signals, pavement markings or other devices. No regulation may be established on a trunk highway unless the consent of the Commissioner of Transportation is first secured.

Sec. 8.2.13.  Removing Keys. No person shall leave a motor vehicle, except a truck that is engaged in loading or unloading, unattended on any street, used car lot, or unattended parking lot without first stopping the engine, locking the ignition and removing all ignition keys from the vehicle. Whenever any police officer finds any motor vehicle standing in violation of this provision, he/she shall remove the keys from the vehicle and deliver them to police headquarters.

Sec. 8.2.14.  Exhibition Driving Prohibited. No person shall turn, accelerate, decelerate or otherwise operate a motor vehicle within the City in a manner that causes unnecessary engine noise or backfire, squealing tires, skidding, sliding, swaying, throwing of sand or gravel, or in a manner simulating a race. Unreasonable squealing or screeching sounds emitted by tires, or the throwing of sand or gravel by the tires is prima facie evidence of a violation of this section.

Sec. 8.2.15.  Police Duties. The Police Department shall enforce the provisions of this Code and the State traffic laws. Police officers are authorized to direct all traffic within the City, either in person or by means of visible or audible signal, in conformity with this code and the State traffic laws. During a fire or other emergency or to expedite traffic or safeguard pedestrians, officers of the Police Department may direct traffic as conditions require notwithstanding the provisions of this Code and the State traffic laws. Officers of the Fire
Department may direct or assist the police in directing traffic at the scene of a fire or in the immediate vicinity.

**Sec. 8.2.16. Penalty.** Any person convicted of violating any provision of this Section 8.2 is guilty of a petty misdemeanor and shall be punished in accordance with the provisions of this Code.

**SECTION 8.3. SNOWMOBILES.**

**Sec. 8.3.01. Definitions.**

“Snowmobile” means a self-propelled vehicle designed for travel on snow or ice or natural terrain, steered by wheels, skis, runners or power driven drum or tracks.

“Operate” means to control the operation of a snowmobile.

“Operator” means a person who operates or is in actual control of a snowmobile.

**Sec. 8.3.02. Unlawful Snowmobile Operation.** It shall be unlawful for any person to operate a snowmobile under the following circumstances:

- **Subd. a.** On private property of another without the express permission to do so by the owner or occupant of said property.
- **Subd. b.** On public school grounds, airport, park property, playgrounds and recreational areas without express permission to do so by proper public authority.
- **Subd. c.** In a manner so as to create loud unnecessary or unusual noise so as to disturb or interfere with the peace and quiet of other persons.
- **Subd. d.** In a careless, reckless or negligent manner so as to endanger, or be likely to endanger, the safety of any person or the property of any other person.
- **Subd. e.** Without having such snowmobile registered as provided for in Minn. Stat. § 84.82.
- **Subd. f.** Within the right-of-way of any public street within the City unless the operator shall have a valid motor vehicle driver’s license issued to him/her by the State of Minnesota, or Snowmobile Safety Certificates as required by Minnesota Department of Conservation.
- **Subd. g.** Upon or over any sidewalk, boulevard, shoulder or curb in the city.
- **Subd. h.** While under the influence of intoxicating liquor, narcotics and habit-forming drugs.
Subd. i. Operate a snowmobile within the City between the hours of 10:00 p.m. and 6:00 a.m.

Subd. j. On the streets, alleys and sidewalks within the following area: That certain area bounded on the north by Third Avenue North, on the south by First Avenue North, on the west by Third Street North, and on the east by Sixth Street North.

Subd. k. On the streets and alleys abutting on the hospital and City parks area, which area is bounded by Park Avenue on the south, by Sixth Street North on the west, by Seventh Street North on the east and by Summit Avenue on the north.

Subd. l. On any skating rinks.

Subd. m. At any speed in excess of 15 miles per hour.

Sec. 8.3.03. All snowmobiles operated within the City shall have the following equipment:

Subd. a. Mufflers that are properly attached and that reduce the noise of the operation of the vehicle to the minimum noise necessary for operating the vehicle. That no person shall use a muffler cut-out, by-pass or similar device on said vehicles.

Subd. b. Adequate brakes as prescribed by the Minnesota Commissioner of Highways and at least one headlight and one taillight.

Subd. c. A safety or so-called “deadman” throttle in operating condition; a safety or deadman throttle is defined as a device that, when pressure is removed from the accelerator or throttle, causes the motor to be disengaged from the driving track.

Sec. 8.3.04. All provisions of Chapter 8 of this Code shall apply to the operation of snowmobiles on the street and alleys in the city, except as to those provisions relating to required equipment, and except as to those provisions that, by their nature, have no application.

Sec. 8.3.05. It is unlawful for the owner or operator to leave or allow a snowmobile to be or remain unattended on public property in which the motor is running or with the keys to start the same in the ignition switch.

Sec. 8.3.06. The City Council, by resolution, may prohibit the operation of snowmobiles within the right-of-way of the public roads or streets or other City property within the City when, in the opinion of the City Council, the public safety and welfare so requires.

Sec. 8.3.07. A snowmobile may make a direct crossing of a street or highway provided:

Subd. a. The crossing is made at an angle of 90 degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
Subd. b. The snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

Subd. c. The driver yields the right-of-way to all oncoming traffic that constitutes an immediate hazard;

Subd. d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.

Sec. 8.3.08. Maps of the City showing designated routes for snowmobile travel within the City limits of Staples shall be on display at numerous locations throughout the City, and shall be on file in the City offices.

SECTION 8.4 MOTORIZED GOLF CARTS.

Sec. 8.4.01. Purpose. Pursuant to Minn. Stat. § 169.045, Subd. 1, a municipality may by ordinance authorize and control the operation of motorized golf carts on designated roadways or portions thereof under their jurisdiction. For the purposes of this ordinance, the terms shall be defined under Minn. Stat. § 169.045, which is hereby made a part of this ordinance as completely as if it were fully set out herein.

Sec. 8.4.02. Definitions. The terms defined in this Section shall have the meanings given to them.

A. Motorized Golf Carts – a gas or electric three or four-wheel vehicle commonly used to transport golfers and their golfing equipment while playing the sport of golf.

B. Roadway – A public roadway is defined as the entire right-of-way, including the paved portion as well as all banks, ditches, shoulders, and medians.

C. Physically Disabled Person – A person who fits the definition of physically disabled under Minn. Stat. § 169.345, Subd. 2.

Sec. 8.4.03. Authorized Operation. Motorized golf carts shall be driven, operated, or controlled on the roadways within the City of Staples only by (a) those persons having a valid permit issued by the City of Staples or (b) any person having a valid driver’s license who is transporting the person to whom the permit has been issued.

Sec. 8.4.04. Permits. No motorized golf cart shall be driven, operated, or controlled on the roadways within the City of Staples unless the driver, operator, or person in control has in his or her actual physical possession a valid, current and unrevoked permit of the City of Staples for such driving, operation, or control of said motorized golf cart.

Sec. 8.4.05. Permit Issuance. Permits shall be issued by the City Clerk upon compliance with this section:

A. Individual Permit: An application for an individual permit shall include the full name and address of the applicant; the applicant’s date of birth; the date of
issuance of the applicant’s current driver’s license, if any; the number of such driver’s license; the date of application and the applicant’s signature; the name of the applicant’s insurance company; the number of the applicant’s insurance policy, the date of expiration of insurance coverage for the vehicle to be driven; and description of the applicant’s disability. Only physically disabled persons shall be authorized to obtain a permit for the driving and operation of a motorized golf cart. As a condition to obtaining an individual permit the City Clerk shall require an applicant to submit a certificate signed by a physician to the effect that the applicant is able to safely operate a motorized golf cart on the roadways within the City of Staples.

B. Revocation of Permit: An individual permit may be revoked or denied by the City Clerk if there is any material misrepresentation made in the permit application; if liability insurance is no longer in effect; or if there is evidence that the permittee cannot safely operate the vehicle. Such evidence may include whether that permittee has had a valid driver’s license revoked for traffic violations. The City Clerk shall issue a notice of revocation of a permit in writing and either hand deliver the notice to the permit holder or send the notice by certified mail to the address on the application. The revocation shall be effective immediately after personal service or three (3) days after mailing.

C. Permit Expiration: Permits shall be issued for and shall be effective for a period of one (1) year.

Sec. 8.4.06. Areas of Operation. Individuals having a valid permit shall be allowed to operate a motorized golf cart on all roadways within the City of Staples. In addition, said vehicles shall not be operated on any United States, State of Minnesota, or County highway or road. Excepting that an operator may cross an intersection of the above-described roadways for purposes of obtaining access to an authorized roadway.

Sec. 8.4.07. Hours of Operations. No motorized golf cart shall be operated between the hours of sunset and sunrise. Said vehicles shall not be operated in inclement weather or when visibility is impaired by weather, smoke, fog, or other conditions, or at any time when there is insufficient light to clearly see persons or vehicles on the roadway at a distance of 500 feet.

Sec. 8.4.08. Traffic Laws. Every person operating a motorized golf cart under permit on designated roadways has all of the rights and duties applicable to the driver of any other vehicle under the provisions of Minnesota Statutes, except when those provisions cannot reasonably be applied to motorized golf carts and except as otherwise specifically provided in Minnesota Statutes.

Sec. 8.4.09. Insurance. Any person operating a motorized golf cart under this ordinance shall have in their possession evidence of liability insurance complying with the provisions of Minn. Stat. 65B.48, Subd. 5. In the event a person operating said vehicle cannot obtain liability insurance in the private market, that person shall be allowed to purchase automobile
insurance including no fault coverage from the Minnesota Automobile Assigned Risk Plan at a rate to be determined by the Commissioner of Commerce.

**Sec. 8.4.10. Unlawful Acts.** No motorized golf cart shall be driven, operated, or controlled on the roadways within the City of Staples:

A. Between sunset and sunrise.

B. In inclement weather, when visibility is reduced by weather, smoke, fog or other conditions or at any time when there is insufficient light clearly to see a person or vehicle on a roadway at a distance of 500 feet.

C. Without prominent display of a slow-moving vehicle emblem provided in Minn. Stat. §169.522 on the rear of such vehicle.

D. Without a mirror so located as to reflect to the driver, operator, or controller, a view of the roadway for a distance of at least 200 feet to the rear of such vehicle.

E. Without liability insurance coverage.

F. Contrary to the traffic laws of the City of Staples or the State of Minnesota except those that cannot readily be applied to motorized golf carts or are not applied by reason of Minn. Stat. § 169.045, Subd. 7.

G. By a person under the age of 18 years.

**Sec. 8.4.11. Designated Cartways.** Motorized golf carts may not be operated on designated walking and bike paths within the City of Staples unless otherwise authorized.

**Sec. 8.4.12. Limitations of Liability.** Nothing in this ordinance shall be construed as an assumption of liability by the City of Staples for any injuries to persons or property that may result from the operation of a motorized golf cart by a permit holder or the failure of the City to revoke said permit.

**Sec. 8.4.13. Enforcement.** Any person violating any provisions of this ordinance shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished by a fine of not more than $300. In addition, a person convicted of violating the terms of this ordinance shall have their permit revoked for a period of one (1) year.
CHAPTER 9 – CRIMES, OFFENSES AND NUISANCES

SECTION 9.1 PUBLIC NUISANCES.

Sec. 9.1.01. Prohibition. No person shall commit or maintain any public nuisance within the City limits.

Sec. 9.1.02. “Public Nuisance” Defined. A public nuisance is the doing of any act or the maintaining of any condition that shall endanger the health, peace and safety of the public, or that shall be offensive to public decency, whether or not such act or condition is listed in this Code.

Sec. 9.1.03. Public Nuisance Endangering Health. The following are declared to be nuisances endangering public health.

Subd. a. The effluence from any cesspool, septic tank, drainfield, or sewage disposal system discharging upon the surface of the ground.

Subd. b. Accumulations of manure, rubbish, tin cans or other debris.

Subd. c. The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste or other substances.

Sec. 9.1.03.5. Noxious Weeds and Grass.

Subd. a. Prohibitions. Any weeds or grass, whether noxious as defined by law or not, upon any lot or parcel of land outside the traveled portion of any street or alley in the city, growing to a greater height than seven (7) inches, or which have gone or are about to go to seed, are declared a nuisance; the owner and the occupant shall abate or prevent such nuisance on such property and on land outside the traveled portion of the street or alley abutting on such property.

Subd. b. Notice to Remove. When the owner and occupant permit a weed or grass nuisance to exist, the City Inspector or designated representative shall serve notice upon the owner of the property, if he/she resides in the City and can be found therein, or upon the occupant or other person in charge of the property in other cases, by registered mail or by personal service, ordering such owner, occupant or person in charge of the property to have such weeds or grass removed within five (5) days after receipt of the notice, stating that, in case of noncompliance, such work will be performed by the City or its agents and the cost thereof made a special assessment against the property concerned. When no owner or occupant can be found, notice shall be mailed to the owner as shown in the records of the City Assessor by certified mail return receipt.

Subd. c. Failure to Comply with Notice. If the person upon whom the notice is served fails, neglects or refuses to cut and remove or to cause to be cut and removed, the weeds, grass or other plants within five (5) days after receipt of the notice, the inspector shall cause the weeds, grass or plants on the land to be cut and removed and the actual
cost of such cutting and removal plus the actual cost of supervision, including the cost of
serving the notice upon the person responsible for the cutting and/or removal, shall be
certified by the Inspector to the City Council. The amount charged against the land shall
be a lien upon the land and shall be added to the taxes to be assessed and levied upon the
land and the Council shall, by appropriate resolution, assess the costs against the land and
certify the same to the County Auditor of Todd or Wadena County, Minnesota.

**Subd. d. Penalty.** Any person violating this Ordinance shall be guilty of a petty
misdemeanor on the first offense and a misdemeanor upon the second and subsequent
offenses.

**Sec. 9.1.04. Public Nuisances Endangering Peace and Safety.** The following are
declared to be nuisances endangering public peace and safety.

**Subd. a.** Trees, hedges, signs, billboards, fences or other obstructions that interfere
with maintenance of right-of-way from seeing traffic.

**Subd. b.** The piling, storing or keeping of old machinery, junk or debris.

**Subd. c.** The unhoused storage of junk vehicles. Junk vehicle means any motor vehicle
that is not in operable condition and remains inoperable for a period of 96 hours, or that is
partially dismantled, or that is used for sale of parts or as a source of repair or
replacement parts for other vehicles, or that is kept for scrapping, dismantling or salvage
of any kind, or that is not properly licensed for operation within the State of Minnesota
by the State of Minnesota. This shall include any machine propelled by power other than
human power and designed to travel along the road by use of wheels, treads, runners or
slides, and transport people or property or pull machinery, and shall include without
limitation automobiles, trucks, trailers, motorcycles, tractors and snowmobiles. Junk
vehicles are prohibited on any property within the City limits of the City of Staples unless
housed within a lawfully erected building, and it is unlawful for any person in charge or
control of property within the City limits of Staples, whether as owner, tenant, occupant,
or otherwise, to allow or in any manner permit any junk vehicle to remain on the property
for more than 96 hours unless the junk vehicle is housed within a lawfully erected
building or on the premises of a bona fide business enterprise operated in a lawful place
and manner, and the junk vehicle is necessary to the operation of the business enterprise.

**Subd. d.** The unlawful interference with, obstruction, or tendency to obstruct or render
dangerous for passage a lake, stream, lagoon, canal or basin or a public park square,
street, alley or highway.

**Subd. e.** Leaving vacated property with holes, trenches or such other condition so as to
be dangerous to public safety.

**Subd. f.** Any act or condition that in any way renders the public insecure in life or in
its use of property.
Sec. 9.1.05. **Public Nuisance Building or Structure.** Any building or structure is a public nuisance that is dangerous to public safety or health or to other property by reason of:

- **Subd. a.** Damage by fire.

- **Subd. b.** Defective chimneys or decay.

- **Subd. c.** Dilapidated condition or decay.

- **Subd. d.** Defective electric wiring.

- **Subd. e.** Defective gas installation.

- **Subd. f.** Defective heating apparatus.

- **Subd. g.** Defective sewage disposal system or plumbing.

- **Subd. h.** Any other defect endangering the public safety, health or other property.

Sec. 9.1.06. **Enforcement.** Any public nuisance as described above shall be abated in accordance with the following procedure: The Council, upon written complaint or on its own motion, after investigation, may order the public nuisance abated. Such order shall specify 48 hours or such longer time as is reasonable for the abatement of such nuisance. Such order shall be served upon the owner or lessee or occupant of the premises and shall be served either personally or by certified mail. In the event that any property owner shall not abate any public nuisance in accordance with an order by the City Council, the Council may order such nuisance abated and assess any costs thereof to the property owner and the property upon which the nuisance is located.

Any peace office of proper jurisdiction, firefighter, or other duly authorized personnel of the City, including City employees charged with road maintenance or snow removal responsibilities, may order a junk vehicle that is a public nuisance to be immediately removed and impounded, and the vehicle shall be surrendered only to the duly identified owner or his/her authorized agent upon payment of all impoundment fees and duly itemized expenses of the City. Any vehicle under the control of the City of Staples pursuant to this section shall be disposed of in accordance with Section 12.4.04 related to disposal of motor vehicles. The impounding of a vehicle pursuant to this section shall not prevent or preclude the prosecution of proceedings for violation of any other Minnesota law or City ordinance or violation of any other provision of the Staples City Code.

Sec. 9.1.07. **Penalty.** Any person who shall cause or create a public nuisance or permit any public nuisance to be created or placed upon, or to remain upon any premises owned or occupied by him/her and any other person who shall fail to comply with any order made under the provisions of this Code, upon conviction thereof shall be guilty of a misdemeanor and shall be punished in accordance with the provisions of this Code. Each day of violation of this section shall constitute a separate offense.
SECTION 9.2 SHADE TREE DISEASE.

Sec. 9.2.01. Declaration of Policy. The City Council has determined that the health of elm trees within the municipal limits is threatened by “Dutch Elm disease”, caused by the fungus Ceratocystis ulmi. It is further determined that the loss of elm trees growing upon public and private property would substantially depreciate the value of property within the City and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the Council to control and prevent the spread of this disease, and this Section in enacted for this purpose.

Sec. 9.2.02. Shade Tree Disease Control Program.

Subd. a. It is the intention of the City Council to conduct a program of plant pest control pursuant to the authority granted by Minn. Stat. § 18.022, as amended.

Subd. b. This program is directed specifically at the control of Dutch Elm disease. The City Administrator shall direct the shade tree disease control program and be the contact between the Commissioner of Agriculture and the Council.

Sec. 9.2.03. Nuisances Declared.

Subd. a. The following things are public nuisances, whenever they may be found within the City.

1. Any elm tree infected with Dutch Elm disease;
2. Any diseased elm tree or part thereof, including branches, stumps, and firewood or other material from which the bark has not been removed; or
3. Any elm tree and part thereof infested by elm bark beetles.

Subd. b. Abatement. It is unlawful for any person to permit any public nuisance, as defined in Section 9.2.03, Subdivision a, to remain on any premises owned or controlled by him/her within the City. Such nuisances may be abated in the manner prescribed by this Code.

Sec. 9.2.04. Inspection and Investigation.

Subd. a. The City Administrator shall inspect all premises and places within the City to determine whether any condition described in Section 9.2.03 of this code exists thereon. This inspection shall be done in accordance with the Minnesota Department of Agriculture recommendations or as often as necessary. He/She shall investigate all reports of the existence of nuisances described in Section 9.2.03. The City Administrator shall be entitled to designate any duly authorized agents to carry out inspection and abatements regarding the provisions of Section 9.2. The purpose of this Section is to allow the City Administrator to appoint agents to inspect and abate problems regarding public nuisances concerning diseased trees.
Subd. b. Entry on Private Premises. The City Administrator, or his/her duly authorized agents, may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned him/her under this Code.

Subd. c. Diagnosis. The City Administrator may, upon finding conditions indicating Dutch Elm disease, send appropriate samples to the State Shade Tree Disease Laboratory for diagnosis or follow diagnostic recommendations of the Commissioner of Agriculture.

Sec. 9.2.05. Abatement of Shade Tree Disease Nuisances. In abating the nuisances defined in Section 9.2.03, the City Administrator shall cause the removed tree or wood to be effectively treated so as to destroy and prevent, as fully as possible, the spread of the disease. Such abatement procedures shall be carried out in accordance with methods prescribed by the Commissioner of Agriculture.

Sec. 9.2.06. Procedure for Removal of Infected Trees and Wood.

Subd. a. Whenever the City Administrator finds with reasonable certainty that any of the conditions defined in Section 9.2.03 exist in any tree or wood in any public or private place in the City, he/she shall proceed as follows:

1. The City Administrator shall notify the property owner by mail that the nuisance will be abated within a specified time, not more than 20 days from the date of mailing such notice.

2. In cases of non-compliance by the property owner within the period specified by the notice, the City Administrator shall immediately abate the nuisance by using municipal labor or by contracting for such services, and shall report such action to the Council. The City may bill the owner of private property for costs incurred for abating such nuisance.

3. The City shall bear the cost of abating any such nuisance located within the right-of-way of any streets and roadways.

Subd. b. The City Administrator shall keep a record of trees removed and the cost of all abatements done under this section and shall report monthly to the City Council all work done for which assessments are to be made, stating and certifying the description of the land, lots, parcels involved and the amounts chargeable to each.

Subd. c. On or before September 1 of each year, the City Clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this section. The City Council may then charge all or any portion of such charges against the property involved as a special assessment under Minn. Stat. § 420.101 and other pertinent statutes for certification to the County Auditor with collection in the following year with that year’s current taxes.
Sec. 9.2.07. Transporting Elm Wood Prohibited. It is unlawful for any person to transport within the City any bark-bearing elm wood without having obtained a permit from the City Administrator. The City Administrator shall grant such permits only in conformity with the State approved removal and wood disposal practices.

Sec. 9.2.08. Interference Prohibited. It is unlawful for any person to prevent, delay or interfere with the City Administrator or his agents while they are engaged in the performance of duties imposed by this Code.

Sec. 9.2.09. Penalty. Any person, firm or corporation who violates this section, upon conviction thereof, shall be guilty of a petty misdemeanor and shall be punished in accordance with the provisions of this code. Each day of violation of this section shall constitute a separate offense.

SECTION 9.3 OPEN BURNING.

Sec. 9.3.01. Minn. Stat. §§ 88.01 through 88.195 are hereby adopted in their entirety and shall be incorporated in the City Code.

Sec. 9.3.02. The City Clerk shall cause copies of Minn. Stat. §§ 88.01 through 88.195 to be on file in the City Administration Offices for availability to the public on request.

Sec. 9.3.03. Open burning shall be permitted for dried leaves only and shall be permitted only from the time period of 6:00 p.m. to 12:00 midnight from October 1 to November 15 each year; provided, however, that these restrictions shall not apply to campfires not more than three feet in diameter confined within non-combustible material, and shall not apply to fires contained in a gas or charcoal grill, camp stove, or other device designed for cooking or heating.

Sec. 9.3.04. Permitted fires shall not be less than fifteen (15) feet from any structure, wood fence, hedge or bush, and no less than five (5) feet from any property line, but the burning of dried leaves is prohibited on City streets, boulevards, alleys, or any public property by private citizens.

SECTION 9.4 DOGS AND CATS.

Sec. 9.4.01. Running at Large Prohibited. It shall be unlawful for any owner or keeper of dogs or cats to permit any dog or cat to run at large upon the premises or property of another person within the limits of the City. This restriction does not prohibit the appearance of any dog or cat upon the streets or public property when the dog or cat is on a leash and is kept under immediate control of the person charged with its care.

Sec. 9.4.02. Licenses.
Subd. a. License Required. It shall be unlawful for any person to own or harbor dogs or cats within the limits of the City without having first obtained a license from the City Clerk, who shall keep a record of all licenses issued and shall issue a metal tag for each license. No license shall be issued until the owner has provided the City Clerk with evidence that the dog or cat has been currently vaccinated against rabies. No boarding or kennel facility shall be allowed in a residential zone.

Subd. b. License Fees; Expiration. The City Council, by resolution, shall establish license fees for keeping dogs and cats, and the resolution shall be filed in the City offices. The expiration date of each license shall be indicated on the license. The term of the dog or cat license shall be for three (3) years and expire on December 31 of the third year; provided, however, that if a license is issued after November 30 of a given year, the license’s effective date is the following January 1. No license shall be transferred except upon application with the City.

Subd. c. Means of Identification. The owner shall permanently identify a dog or cat by means of a tag or chip. The owner shall be responsible for this identification to be on the dog or cat at all times.

Subd. d. Abandonment. It shall be unlawful for any person to abandon dogs or cats within the City limits, including in a vacated or unoccupied dwelling.

Sec. 9.4.03. Dog or Cat Nuisances. The owner or custodian of any dog or cat shall prevent the dog or cat from committing, within the City limits, any act that constitutes a nuisance. It shall be unlawful for any person, owner or custodian to harbor or maintain any dog or cat that, by its barking, howling, whining, meowing or other noise disturbs the people in the locality where these dogs or cats are owned, kept or maintained. It shall be unlawful for the owner or custodian of any dog or cat not to prevent any dog or cat from committing, within the City limits, any act that constitutes any other nuisance that includes but is not limited to, to molest or annoy any person away from the property of it’s owner or custodian, or to damage, defile, deposit feces on public or private property without the property owner’s consent, or destroy public or private property.

Sec. 9.4.04. Confinement of Certain Dogs or Cats. Every female dog or cat in heat shall be confined in a building or other secure enclosure in such manner that it cannot come into contact with another dog or cat, except for planned breeding.

Sec. 9.4.05. Quarantine of Certain Dogs or Cats. Any dog or cat that bites a person shall be quarantined for such time as may be directed by the Animal Control Authority. During quarantine, the animal shall be securely confined and kept from contact with any other animal. At the discretion of the Animal Control Authority, the quarantine may be on the premises of the owner; however, if the Animal Control Authority requires any other confinement, the owner shall surrender the animal for the quarantine period to an animal shelter or shall, at his/her own expense, place it in a veterinary hospital.
Sec. 9.4.06. **Muzzling Proclamation.** Whenever the prevalence of rabies renders such action necessary to protect the public health and safety, the Council shall issue a proclamation ordering every person owning or keeping a dog or cat to muzzle it securely so that it cannot bite. No person shall violate such proclamation, and any unmuzzled dog or cat unrestrained during the time fixed in the proclamation shall be subject to impoundment as heretofore provided, and the owner of such dog or cat shall be subject to the penalty hereinafter provided.

Sec. 9.4.07. **Impounding.**

**Subd. a.** It shall be lawful and the duty of any peace officer or any person duly designated and appointed by the City Council to enforce the provision of this section to capture, seize, and deliver to the keeper of a public pound, any dog or cat found within the City limits to run at large, and may give notice to the owner or custodian of such dog or cat, if known. If any dog or cat is not claimed within five (5) working days of impoundment, it will be properly disposed of. The City Council, by resolution, shall establish a dog and cat impound fee, and the resolution shall be filed in the City offices.

**Subd. b.** Vaccination and Redemption. Any dog or cat held by the pound for which evidence of a current vaccination against rabies is not provided shall be vaccinated against rabies before redemption from the pound by its owner. In order to redeem the dog or cat, the owner shall first pay any veterinarian expense incurred, plus the impounding fee established by the City, as well as a license fee for the dog or cat, if any.

**Subd. c.** Disposition of Unclaimed Dogs or Cats. Any dog or cat that is not redeemed within the time specified in Subdivision a. may be sold, only if spayed or neutered, for not less than the amount provided in Subdivision b. to anyone desiring to purchase the dog or cat if it is not requested by a licensed educational or scientific institution under Minn. Stat. § 35.71. All sums received in excess of the fees fixed by Subdivision b. shall be paid to the owner or custodian if he/she makes a claim within one (1) year of the sale and furnishes satisfactory proof of ownership. Any dog or cat that is not claimed by the owner or custodian or sold shall be painlessly euthanized and properly disposed of by the person having custody of the dog or cat.

Sec. 9.4.08. **Penalty.** Any person keeping any dogs or cats who is found guilty of violating any provision of this ordinance is guilty of a petty misdemeanor.

**SECTION 9.5 OTHER ANIMALS.**

**Sec. 9.5.01.** **General Prohibition.** No person shall keep any horse, cattle, sheep, goat or similar animal in the City or permit such animal to be kept on premises owned, occupied or controlled by him/her except under the conditions prescribed by this chapter.
Sec. 9.5.02. Areas Where Keeping Prohibited. No horse, cattle, sheep, goat or similar animal shall be kept in the City except as permitted in an Agricultural District pursuant to Sec. 5.6 of the Staples City Code.

Sec. 9.5.03. Treatment. No person shall treat any animal in a cruel or inhumane manner.

Sec. 9.5.04. Animals at Large. No person shall permit any horse, mule, donkey, pony, cattle, sheep, goat, swine, rabbit, chicken, geese, duck or turkey of which he/she is the owner, caretaker or custodian to be at large within the City. Any such animal is deemed to be at large when it is off the premises owned or rented by the owner or his/her agent and not under his individual restraint.

Sec. 9.5.05. Diseased Animals. Any animal with a contagious disease shall be so confined that it cannot come within 50 feet of any public roadway or any place where animals belonging to or harbored by another person are kept.

Sec. 9.5.06. Manner of Keeping. No person shall keep any dog, cat or other animal in the City in an unsanitary place or condition or in a manner resulting in objectionable odors or in such a way as to constitute a nuisance or disturbance by reason of barking, howling, fighting or other noise or in such a way as to permit the animal to annoy, injure or endanger any person or property.

Sec. 9.5.07. Care of Premises.

Subd. a. Clean Shelters. Every structure and yard in which animals or fowl are kept shall be maintained in a clean and sanitary condition and free of all rodents, vermin and objectionable odors. The interior walls, ceilings, floors, partitions and appurtenances of any such structure shall be whitewashed or painted as the Health Officer shall direct. Upon the complaint of any individual or otherwise, the Health Officer shall inspect such structure or yard and issue any such order as may be reasonably necessary to carry out the provisions of Section 9.5.

Subd. b. Manure. Manure shall be removed with sufficient frequency to avoid nuisance from odors or from the breeding of flies, at least once per month from October 1 to May 1 each year and once every two weeks at other times. Unless used for fertilizer, manure shall be removed by hauling beyond the City limits. If used for fertilizer, manure shall be spread upon the ground evenly and turned under at once or as soon as the frost leaves the ground.

Sec. 9.5.08. Impounding.

Subd. a. Who Impounds. Any police officer may take up and impound in the City pound any animal or fowl found running at large in violation of this section and shall provide proper sustenance for every animal impounded.
Subd. b. Notice. Within 24 hours after any animal has been impounded, any police officer shall post notices in three conspicuous places in the City, one of them at the pound, describing the animal and stating that it has been impounded. He/She shall also make a reasonable attempt to give oral or written notice to the owner where known.

Subd. c. Release. No animal impounded shall be released except to a person displaying a receipt from the Clerk showing payment of the impounding fee or the sale price.

Subd. d. Fees. Any animal may be redeemed from the pound by the owner within the time stated in the notice by the payment to the Clerk of the impounding fee established by resolution of the City, plus any veterinarian expense incurred.

Subd. e. Sale. If any impounded animal is not redeemed within 6 days, the police officer shall give an additional 3-day posted notice, as provided in Subdivision b. of the time and place, when and where the animal shall be sold. If the police officer is unable to sell the animal on the day stated, he/she may sell the animal as soon thereafter as possible without further notice.

Subd. f. Proceeds of Sale. From the proceeds of sale, the Clerk shall pay the police officer the costs of impounding. The balance shall be paid, on order of the Council, to the owner of the animal or fowl if claimed within one year from the date of sale, otherwise, it shall be forfeited to the City.

Subd. g. Illegal Release. No unauthorized person shall break into the pound or release any animal legally placed therein.

SECTION 9.6 WEAPONS.

Sec. 9.6.01. Definition. The term “deadly weapons” as used in this section shall include the following:

Subd. a. All firearms;

Subd. b. Bows and arrows when the arrows are pointed or tipped;

Subd. c. All instruments used to expel at high velocity any pellets of any kind, including, but not limited to, BB guns and air rifles;

Subd. d. Sling shots;

Subd. e. Metal knuckles; and

Subd. f. Switchblade knives, being knives with retractable blades.
Sec. 9.6.02. Discharge Prohibited Generally. Except as herein specifically authorized, the discharge or use of deadly weapons within the City is hereby prohibited, except that the discharge or use of deadly weapons shall be allowed if all of the requirements in at least one subdivision described below are fulfilled where the discharge of the deadly weapon takes place.

Subd. a. The property is in an agricultural district, and the discharge is for hunting or predatory control purposes, and all State and Federal regulations are obeyed.

Subd. b. The property is in an agricultural district and the discharge is for hunting or predatory control purposes and written permission from the owners and occupants of any occupied buildings within 500 feet of the discharge has been obtained, with the written permission to be in possession of the person discharging the deadly weapon, and all State and Federal regulations are obeyed.

Subd. c. The property is in an agricultural district with size of at least 40 acres, and the discharge is in conjunction with the slaughtering of livestock for purposes of human consumption, and the projectile does not carry beyond the property boundary line.

Subd. d. The property is in one of the following described non agricultural parcels, and only a bow and arrow is used for hunting or predatory control purposes, and all State and Federal regulations are obeyed.

Wadena County, Thomastown Plat, Township 134N, Range 33W

Section 26 (SE ¼)
Section 35 (NW ¼), (NW ¼ of SW ¼), (S ½ of NE ¼ of SW ¼)
Section 34 (SE ¼)
Section 25 (N ½ of SW ¼), (E ½ of SE ¼ of SW ¼)

Todd County, Staples Plat, Township 133N, Range 33W

Section 3 (NE ¼), (That Portion of the SE ¼ Lying North of Highway No. 10)
Section 2 (N ½ of NW ¼), (NW ¼ of NE ¼)

Sec. 9.6.03. Aiming Prohibited. The aiming of any deadly weapon, whether loaded or not, at or towards any human being is hereby prohibited.

Sec. 9.6.04. Furnishing to Minors. The selling, giving, loaning or furnishing in any way of any deadly weapon to a minor without the written consent of his parents or guardian is hereby prohibited.

Sec. 9.6.05. Use by Minor. No minor under the age of fourteen (14) years shall handle or have in his/her possession or under his/her control, except while accompanied by or under the immediate charge of his parent or guardian, any deadly weapon.
Sec. 9.6.06. **Carrying Concealed.** The possession by any persons other than a public officer of any deadly weapon concealed on his/her person is hereby prohibited.

Sec. 9.6.07. **Discharge Restricted.** The firing of a gun or use of other deadly weapon in the lawful defense of the person, property or family of the user of said weapon is excepted from the prohibitions set forth in this section and similarly, the firing of a gun or use of other deadly weapons in the necessary enforcement of the law, whether by a police officer or a private individual, is also excepted from the prohibitions contained herein.

Sec. 9.6.08. **Permits.** The City Council may promulgate regulations for the suitable protection of persons and property and, subject to such regulations, the Council may issue special permits to duly organized clubs and their members for shooting or the use of air rifles or bow and arrows on lands owned or leased by such clubs. Such permits shall be issued by the Clerk upon direction of the Council, shall be in writing, and shall be valid only when in the possession of the person to whom issued.

**SECTION 9.7 PENALTY.** Unless otherwise designated as a petty misdemeanor, any person convicted of violating any provision of this Chapter 9 shall be guilty of a misdemeanor and punished in accordance with the provisions of this Code.

**SECTION 9.8 TRESPASSING AND DISORDERLY CONDUCT IN SCHOOL AREAS.**

Sec. 9.8.01. **Trespassing.** It shall be unlawful for any person to remain in a public or private school building or upon the grounds and office after being requested to leave the premises by the school principal or other persons lawfully responsible for the control of said premises. These premises shall include the Community Center parking lot and related Community Center areas when high school classes and activities are being held.

Sec. 9.8.02. **Disturbances.** It shall be unlawful for any persons whether on or off school premises willfully to annoy, disturb, interfere with, or obstruct any classroom instruction, teaching program or other school organization or assembly being conducted upon the premises of any public or private school.

Sec. 9.8.03. **Disorderly Conduct.** No person shall willfully or maliciously make or assist in making on any school grounds adjacent to any school building or structure any noise, disturbance or improper diversion or activity by which peace, quiet and good order shall be disturbed.

Sec. 9.8.04. **Petty Misdemeanor Violation.** Any violation of the provision of this ordinance shall constitute a petty misdemeanor, and upon conviction thereof, the offender may be fined not more than $200.00.

**SECTION 9.9 Repealed. See Section 10.10.**

**SECTION 9.10 PROCEDURES FOR ENFORCING ADMINISTRATIVE OFFENSES.**
Sec. 9.10.01. Purpose. Administrative offense procedures established pursuant to this Section are intended to provide the public and the City of Staples with an informal, cost effective, and expeditious alternative to traditional criminal charges for violations of certain City Code provisions. The procedures are intended to be voluntary on the part of those who have been charged with administrative offenses. At any time prior to the payment of the administrative penalty as is provided for thereafter, the individual may withdraw from participation in the procedures, in which event the City may bring criminal charges in accordance with law. Likewise, the City of Staples, in its discretion, may choose not to initiate an administrative offense and may bring criminal charges in the first instance. In the event a party participates in the administrative offense procedures but does not pay the monetary penalty that may be imposed, the City of Staples will seek to collect the costs of the administrative offense procedures as part of a subsequent criminal sentence in the event the party is charged and is adjudicated guilty of the criminal violation.

Sec. 9.10.02. Administrative Offense Defined. An administrative offense is a violation of a provision of the City Code and is subject to the administrative penalties set forth in the schedule of offenses and penalties referred to in Sec 9.10.09, entitled “Offenses and Penalties,” hereafter.

Sec. 9.10.03. Notice. Any officer of the City of Staples Police Department or any other person employed by the City, authorized in writing by the City Administrator, and having authority to enforce this Code, shall, upon determining that there has been a violation, notify the violator, or, in the case of a vehicular violation, attach to the vehicle a notice of the violation. Said notice shall set forth the nature, date, and time of violation, the name of the official issuing the notice, and the amount of the scheduled penalty.

Sec. 9.10.04. Payment. Once such notice is given, the alleged violator shall, within seven (7) days of the time of issuance of the notice, pay the amount set forth on the schedule of penalties for the violation. The penalty may be paid in person or by mail, and payment shall be deemed to be an admission of the violation.

Sec. 9.10.05. Failure to Pay. In the event a party charged with an administrative offense fails to pay the penalty, a misdemeanor or petty misdemeanor charge may be brought against the alleged violator in accordance with applicable statutes. If the penalty is paid no further charge shall be brought by the City of Staples for the same violation.

Sec. 9.10.06. Disposition of Penalties. All penalties collected pursuant to this Section shall be paid to the City of Staples and deposited in the City’s General Fund.

Sec. 9.10.07. Offenses and Penalties. Offenses which may be charged as administrative offenses and the penalties for such offenses may be established by resolution of the City Council from time to time. Copies of such resolution shall be maintained in the Office of the City Administrator.

Section 9.11 Controlling Loud Noise
Sec. 9.11.01. Unlawful to Make Loud or Unnecessary Noises. It shall be unlawful for any person to make, or cause to be made any loud, unnecessary or unusual noise that either annoys, disturbs, or affects the comfort, repose, health, or peace of others.

Sec. 9.11.02. Unlawful Acts. The following acts set forth in the following subdivisions are declared to be loud, disturbing, and unnecessary noises in violation of this section, but said enumeration shall not be deemed to be exclusive.

Subd. a. Horns, Signaling Devices, Etc. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle, except as a danger warning.

Subd. b. Radios, Tape and Disc Players, Etc. The using, operating, or permitting to be played, any radio receiving set, tape or disc player, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such a manner, considering the time and place and the purpose for which the sound is produced, as to disturb the peace, quiet or repose of a person or persons or ordinary sensibilities.

1. The play, use or operation of any radio, tape or disc player, musical instrument, phonograph or other machine or device for the production or reproduction of sound in such manner as to be plainly audible at a distance of fifty (50) feet from such machine or device shall be prima facie evidence of a violation of this section.

2. When sound violating this section is produced or reproduced by a machine or device that is located in or on a vehicle, the vehicle’s owner is guilty of the violation, provided, however, that if the vehicle’s owner is not present at the time of the violation, the person in charge or control of the vehicle at the time of the violation is guilty of the violation.

3. This section shall not apply to sound produced by the following:

A. Amplifying equipment used in connection with activities that are authorized, sponsored or permitted by the City of Staples, so long as the activity is conducted pursuant to the conditions of the license, permit or contract authorizing such activity.

B. Church bells, chimes or carillons.

C. School bells.

D. Anti-theft devices.

E. Machines or devices for the production of sound on or in authorized emergency vehicles.
4. With the exception of the machines or devices listed in subsection (c), this section shall apply to all radios, tape and disc players, musical instruments, phonographs, and machines and devices for the production or reproduction of sound, whether on public or private property.

**Subd. c. Loud Speakers, Amplifiers for Advertising.** The using, operating, or permitting to be played any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound that is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

**Subd. d. Animals, Birds, Etc.** The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the comfort or repose of any persons in the vicinity.

**Subd. e. Whistles or Sirens.** The blowing of a locomotive whistle or steam whistle attached to any stationary boiler or any siren whatsoever except to give notice of the time to begin or stop work or as a warning of fire or danger, or by public emergency vehicles.

**Subd. f. Exhausts.** The discharge into the open air of the exhaust of any vehicle except through a muffler or other device that will effectively prevent loud or explosive noises therefrom.

**Subd. g. Defect in Vehicle or Load.** The use of any automobile, motorcycle, or vehicle so out of repair, so loaded, or in such manner as to create loud and unnecessary grating, grinding, rattling, or other noise that shall disturb the comfort or repose of any persons in the vicinity.

**Subd. h. Truck Dynamic Brake (Jake Brake).** The intentional use of dynamic (Jake) brake on any public highway, street, parking lot or alley in the City of Staples.

**Subd. i. Construction or Repairing of Buildings.** The erection (including excavating), demolition, alteration, or repair of any building between the hours of 9:00 p.m. and 6:00 a.m. on week days and all day Sunday except where single individuals or families work on single family residences for their own occupancy owned by them, except that the Building Inspector may, in cases of emergency, grant permission to repair at any time when he/she finds that such repair work will not affect the health and safety of the persons in the vicinity.

**Subd. j. Schools, Courts, Churches, Hospitals.** The creation of any excessive noise on any street or private property adjacent to any school, institution of learning, church, court, or hospital while the same are in use that unreasonably interferes with the use thereof provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.
Subd. k. Pile Drivers, Hammers, Etc. The operation between the hours of 9:00 p.m. and 6:00 a.m. of any pile driver, power shovel, pneumatic hammer, derrick, power or electric hoist, or other appliance the use of which is attended by loud or unusual noise.

Subd. l. Blowers. The operation of any noise creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of aerating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.

Subd. m. Noisy Parties and Gatherings.

1. Prohibition. No person shall congregate at, or participate in any party or gathering of two or more people from which noise, including yelling, whistling and singing, emanates of a sufficient volume so as to disturb the peace, quiet, or repose of another person. No person shall knowingly remain at such a noisy party or gathering.

2. Evidence. Noise of such volume as to be clearly audible at a distance of 50 feet from the structure or building in which the party or gathering is occurring, or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of a violation of this section.

3. Duty to Disperse. When a police officer determines that a party or gathering is in violation of this section, the officer may order all persons present at the premises where the violation is occurring, other than the owner or tenants of the premises, to disperse immediately. No person shall knowingly remain at such a party or gathering.

4. Exceptions. The following are exempt from violation of this section:

   A. Activities which are duly authorized, sponsored or licensed by the City of Staples, so long as the activity is conducted pursuant to the conditions of the license, permit or contract authorizing such activity.

   B. Church bells, chimes, or carillons.

   C. Persons who have gone to a party for the sole purpose of abating the violation.

   D. Any snow removal activities or other emergencies related to natural disasters.

Subd. n. Exemptions Authorized by the Staples City Council. Upon special request made by contractors, the Council may exempt contractors performing public works operations from time prohibitions set forth within this section.
Sec. 9.11.03. Petty Misdemeanor. Every person who violates any of the provisions of Subd. a. through Subd. m. is guilty of a petty misdemeanor.

Sec. 9.11.04. Misdemeanor. Every person who fails to immediately comply with an order of a police officer pursuant to the provisions of Subd. a. through Subd. m. is guilty of a misdemeanor.

Sec. 9.11.05. Amendment. This section may be amended at any time to meet or comply with State law, or to change, expand, or revise, or delete any or all of the text. All amendments shall comply with State and local public notice provisions.

Sec. 9.11.06. Severability. Any part of this section, chapter, paragraph, sentence, or word found and determined by a competent court with jurisdiction to be invalid or void, shall not operate to affect any other chapter, paragraph, sentence, or word, of this section.
CHAPTER 10 – MUNICIPAL LICENSING AND REGULATIONS

SECTION 10.1 LIQUOR AND NON-INTOXICATING MALT LIQUOR.

See Section 7.1 of this Code.

SECTION 10.2 DOGS.

See Section 9.4 of this Code.

SECTION 10.3 GARBAGE AND REFUSE.

Sec. 10.3.01. Definitions. For the purposes of this chapter, the following words and phrases have the meanings given them in this section:

“Garbage” means organic waste resulting from the preparation of food and decayed and spoiled food from any source.

“Recyclables” include paper, plastic, tin cans, aluminum, motor oil, glass, and other metal goods, each separated or otherwise prepared so as to be acceptable to the recycling center where they are to be deposited.

“Recycling Center” means premises, if any, used for the receipt, storage, or processing of recyclables and approved as such by the Council when the premises are in the City or by the governing body of the local government unit having jurisdiction when the premises are outside the city.

“Refuse” includes garbage and rubbish.

“Rubbish” means inorganic solid waste such as tin cans, glass, paper, ashes, sweepings, etc.

Sec. 10.3.02. General Regulations.

Subd. a. Unauthorized Accumulation. Any unauthorized accumulation of refuse on any premises is a nuisance and prohibited.

Subd. b. Refuse in Streets, etc. No person shall place any refuse in any street, alley, or public place or upon any private property except in proper containers for collection. No person shall throw or deposit refuse in any stream or other body of water.

Subd. c. Scattering of Refuse. No person shall deposit anywhere within the City any refuse in such manner that it may be carried or deposited by the elements upon any public or private premises within the City.
Subd. d. Burying of Refuse; Composting. No person shall bury any refuse in the City except in an approved sanitary landfill, but leaves, grass clippings, and easily biodegradable, non-poisonous garbage may be composted on the premises where such refuse has been accumulated. Garbage may be composted only in a rodent-proof structure and in an otherwise sanitary manner and after the Council gives its approval to such composting after it finds that the composting will be done in accordance with these standards.

Sec. 10.3.03. Removal of Garbage, Rubbish, and Waste Matter. In the residential district of the City, all garbage cans shall be emptied and the garbage removed therefrom at least once during a calendar week, and all garbage cans used by the restaurants, markets, and food stores shall be removed daily (except for Saturdays, Sundays and legal holidays).

Sec. 10.3.04. Containers.

Subd. a. General Requirement. Every householder, occupant, or owner of any residence and any restaurant, industrial establishment, or commercial establishment shall provide on the premises one or more containers to receive and contain all refuse which may accumulate between collections. All normal accumulations of refuse shall be deposited in such containers. Leaves, trimmings from shrubs, grass clippings, shavings, excelsior, and other rubbish of similar volume and weight may be stored in closed containers not meeting the requirements of Subdivision b.

Subd. b. Container Requirements. Each container shall be water-tight, shall be impervious to insects and rodents, shall be fireproof, and shall not exceed 32 gallons in capacity; except that any commercial or business establishment having refuse volume exceeding two cubic yards per week shall provide bulk or box-type refuse storage containers of a type approved by the proper City officials. Containers shall be maintained in good and sanitary condition. Any container not conforming to the requirements of this chapter or having ragged or sharp edges or any other defect likely to hamper or injure the person collecting the contents shall be promptly replace after notice by the City.

Subd. c. Placement. Where an alley open to traffic is available, each container for premises abutting the alley shall be placed at the rear of the property next to the alley. Where no alley exists, the container shall be placed near the rear door of the building to which it relates.

Subd. d. Use of Containers. Refuse shall be drained of liquid, and household garbage shall be wrapped before being deposited in a container. Highly inflammable or explosive material shall not be placed in containers.

Sec. 10.3.05. Licensed Collectors.

Subd. a. License Required. No person shall permit refuse to be picked up from his premises by an unlicensed collector.
Subd. b. Application. Any person desiring a license shall make application to the City Clerk on a form prescribed by him. The application shall set forth:

1. The name and address of the applicant;
2. A description of each piece of equipment proposed to be used in the collection;
3. The proposed charges to be made of those who use the service;
4. A description of the kind of service proposed to be rendered;
5. The place to which the refuse is to be hauled; and
6. The manner in which the refuse is to be disposed of.

Subd. c. Insurance. No license shall be issued until the applicant files with the Clerk a current policy of public liability insurance covering all vehicles to be used by the applicant in the licensed business. The limits of coverage of such insurance are:

1. Each person injured, at least $100,000.00;
2. Each accident, at least $300,000.00; and
3. Property damage, at least $50,000.00.

Subd. d. License Fees. The Council, by resolution, shall establish license fees for licensed collectors pursuant to this section. Licensing resolutions shall be on file in the city offices.

Subd. e. Rates and Charges. The Council, by resolution, shall establish the maximum rates and charges that a licensed collector shall charge any user of his refuse collection service.

Sec. 10.3.06. Collection Vehicles. Every refuse collection vehicle shall be lettered on the outside so as to identify the licensee (contractor). Every vehicle used for hauling garbage shall be covered, leak-proof, durable, and of easily cleanable construction. Every vehicle used for hauling refuse shall be sufficiently airtight, and so used as to prevent unreasonable quantities of dust, paper, or other collected materials to escape. Every vehicle shall be kept clean to prevent nuisances, pollution, or insect-breeding, and shall be maintained in good repair.

SECTION 10.4 TOBACCO, TOBACCO PRODUCTS, TOBACCO RELATED DEVICES AND TOBACCO SHOPS.

Sec. 10.4.01. Purpose. This Section shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing
and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Stat. § 144.391.

Sec. 10.4.02. 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 the term “may” means permissive. The following terms shall have the definitions given to them:

a. “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 shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco related devices for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State or Local laws and regulations relating to tobacco, tobacco products, and tobacco related devices.

b. “Direct Supervision” shall mean being in the immediate presence and witnessing the sale of tobacco products by a minor employee.

c. “Individually Packaged” shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be 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.

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

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

f. “Moveable Place of Business” shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for transactions.

g. “Retail Establishment” shall mean any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. Retail
establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

h. “Sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

i. “Self-Service Merchandising” shall mean open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, without the assistance or intervention of the licensee or the licensee’s employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

j. The words “Tobacco Shop” mean a self-contained, department within a larger retail establishment, in which tobacco is offered for sale, with or without other non-tobacco products, which includes open air display of individual products for inspection and selection by patrons, and which is continuously staffed by an employee from which persons under 18 years of age are prohibited from entering, and which otherwise complies with the requirements of Minn. Stat. § 461.18, Subd. 1(d).

k. “Tobacco” or “Tobacco Products” shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing 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 or forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.

l. “Tobacco Related Devices” shall mean any tobacco product as well as a pipe and rolling papers.

m. “Vending Machine” shall mean any mechanical, electric or electronic, or other type of device that 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 product, or tobacco-related device.

Sec. 10.4.03. License. No person shall sell or offer to sell any tobacco, tobacco products, or tobacco related device without first having obtained a license to do so from the City of Staples.

a. 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 City Council for action at its next regularly scheduled Council Meeting. If the City Clerk shall determine that an application is incomplete, he/she shall return the application to the applicant with notice of the information necessary to make the application complete.

b. Action. The City Council may either approve or deny the license, or it may deny action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the City Clerk shall issue the license to the applicant. If the City 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 decision.

c. Term. All licenses issued under this Section shall be valid from the date of issue and shall expire on December 31 in the year of issue.

d. Revocation or Suspension. Any license issued under this Section may be revoked or suspended as provided in the Violations and Penalties section of this Section.

e. Transfers. All licenses issued under this Section 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 City Council.

f. Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this Section.

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

h. 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 thirty days, but no more than, sixty days before the expiration of the current license.

Sec. 10.4.04. Fees. No license shall be issued under this Section until the appropriate license fee is paid in full. The fee for a license under this Section shall be $60.00.

Sec. 10.4.05. Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this Section; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the City must deny the license. 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 18 years; or

b. The applicant has been convicted within the past five 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; or

c. The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices revoked within the preceding twelve months of the date of application; or

d. The applicant fails to provide any information required on the applications, or provides false or misleading information; or

e. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

Sec. 10.4.06. Prohibited Sales. It shall be a violation of this Section for any person to sell or offer to sell any tobacco, tobacco products, or tobacco related device:

a. To any person under the age of eighteen (18); or

b. By means of any type of vending machine, except as may otherwise be provided in this Section; or

c. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco related device between the licensee or the licensee’s employee, and the customer, except as provided in Section 10.4.08. This Section 10.4.06. c. will not apply to tobacco shops; or

d. By means of loosies as defined in Section 10.4.02. d; or

e. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substance except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process; or

f. By any other means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or to other regulation.

Sec. 10.4.07. Vending Machines. It shall be unlawful for any person licensed under this Section to allow the sale of tobacco, tobacco products, or tobacco related devices by the
means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

**Sec. 10.4.08.  Self-Service Sales.**  It shall be unlawful for a licensee under this Section to allow the sale of tobacco, tobacco products, or tobacco related devices by any means whereby the customer may have access to such items without having to request the items from the licensee or the licensee’s employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco related device between the licensee or his or her clerk and the customer, except unopened cartons of cigarettes, containing ten packs or more. All tobacco, tobacco products and tobacco related devices, except unopened cartons of cigarettes, containing 10 packs or more, shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, or tobacco related devices at the time this Section is adopted shall comply with this Section within 30 days of the effective date of this Section.

**Sec. 10.4.09.  Responsibility.**  All licensees under this Section 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 be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City of Staples from also subjecting the clerk to whatever penalties are appropriate under this Section, State or Federal law, or other applicable law or regulation.

**Sec. 10.4.10.  Compliance Checks and Inspections.**  All licensed premises shall be open to inspection by the Staples Police Department or other authorized City officials during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premises to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated City personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products or tobacco related devices when such items are obtained or attempted to be obtained as a part of the compliance check. Nothing in this Section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

**Sec. 10.4.11.  Other Illegal Acts.**  Unless otherwise provided, the following acts shall be a violation of this ordinance.

a. **Illegal Sales.**  It shall be a violation of this Section for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor.

b. **Illegal Possession.**  It shall be a violation of this Section 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.
c. **Illegal Use.** It shall be a violation of this Section for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.

d. **Illegal Procurement.** It shall be a violation of this Section 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 Section for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation 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.

e. **Use of False Identification.** It shall be a violation of this Section 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 represent an age older than the actual age of the person.

f. **Minor Employee.** It shall be a violation of this Section for any person under the age of 18 to sell tobacco, tobacco product, or tobacco related device without “direct supervision” by a licensee’s employee who is 18 years or older.

**Sec. 10.4.12. Violations.**

a. **Notice.** Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and that shall inform the alleged violator of his or her right to be heard on the accusation. The alleged violator has ten (10) days from the date of issuance of the citation to request a hearing.

b. **Hearings.** If a person accused of violating this Section so requests, a hearing shall be scheduled stating the time and place and be provided to the accused violator.

c. **Hearing Officer.** An independent hearing officer shall serve as the hearing officer.

d. **Decision.** If the hearing officer determines that a violation of this Section did occur, that decision, along with the hearing officer’s reasons for finding a violation and the penalty to be imposed under Section 10.4.13, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

e. **Appeals.** Appeals of any decision made by the hearing officer shall be filed in the district court for the jurisdiction of the City of Staples in which the alleged violation occurred.

f. **Misdemeanor Prosecution.** Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Section.

g. **Continued Violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
Sec. 10.4.13. Penalties.

a. **Licensees.** Any licensee found to have violated this Section, or whose employee shall have violated this Section, shall be charged an administrative fine of $75 for a first violation of this ordinance; $200 for a second offense at the same licensed premises within a twenty-four month period; and $250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

b. **Other Individuals.** Other individuals, other than minors regulated by item “c” of this Section, found to be in violation of this Section shall be charged an administrative fee of $100.

c. **Minors.** Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall be handled by the criminal justice system.

d. **Misdemeanor.** Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this Section.

Sec. 10.4.14. Exception and Defenses. Nothing in this Section 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 Section for a person to have reasonably relied on proof of age as described by State law.

Sec. 10.4.15. Severability and Savings Clause. In any section or portion of this Section 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 provision of this Section.

Sec. 10.4.16. Effective Date. This Section shall take effect upon publication.

SECTION 10.5 BINGO, GAMBLING DEVICES, AND RAFFLES.

Sec. 10.5.01. Bingo Games

Subd. a. **Statute Incorporated.** The provisions of Minn. Stat. §§ 349.11 through 349.23 relating to the game of bingo are adopted and made a part of this Code as if set out in full. In addition, the regulations of this Code apply to the conduct of bingo within the City.

Sec. 10.5.02. Gambling Devices, Raffles.

Subd. a. **Statute Adopted.** The provisions of Minn. Stat. § 349.26 relating to the licensing of certain kinds of gambling are adopted and made a part of this Code as if set out in full. In addition, the regulations imposed by this Code apply to the conduct of gambling so licensed.
Subd. b. License Required. No person shall directly or indirectly operate a gambling device or conduct a raffle without a license to do so as provided in this Code.

Subd. c. Persons Eligible for License. A license shall be issued only to a fraternal, religious, or veterans organization and to any corporation, trust, or association organized for exclusively scientific, literary, charitable, educational, or artistic purposes, and any club that is organized and operated exclusively for pleasure or recreation. Such organization or corporation, trust or association shall have been in existence for at least three years and shall have at least 30 active members.

Subd. d. Application. The application for a license shall state where the gambling device will be used or the lottery conducted and the dates and hours for which the activity to be licensed will be conducted. The application shall be verified by a duly authorized officer of the organization and by the designated gambling manager. No application shall be accepted unless accompanied by the full annual license fee.

Subd. e. License Fees. The City Council, by resolution, shall establish license fees for a paddle wheel license, tipboard license, and raffle license, and said resolution shall be on file in the City offices.

Subd. f. Fidelity Bond. No license shall be used under this part until the gambling manager furnishes a fidelity bond in the sum of $10,000.00 in favor of the organization. The bond shall be conditioned on the faithful performance by the manager of his duties. The bond shall not be cancelable except upon 30-days written notice to the City. The Council may, by unanimous vote, agree to waive the fidelity bond requirement. If such waiver is granted, the license shall be endorsed to indicate such action.

Subd. g. Revocation. No licensee shall have a vested right in any license under this part and the license may be suspended or revoked by the Council at any time upon a showing that:

1. Any misrepresentation has been made in the license application or in any report required of the licensee, or

2. The licensee has violated or caused to be violated any provision of this ordinance or the applicable State law.

Section 10.6 Peddlers.

Sec. 10.6.01. Definition. The word “peddler” as used in this chapter shall mean any individual, whether a resident of the City or not, traveling by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house, or from street to street, for the sale of, as well as the selling, offering for sale or taking or attempting to take orders for the sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether such individual has, carries or exposes for sale a sample of the subject of such sale.
or not or whether he/she is collecting advance payments on such sales or not; provided that such definition shall include any person who, for himself, or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within this City for the sole purpose of exhibiting samples and taking orders for future delivery. The word “peddler” shall include the terms “canvasser”, “solicitor”, “transient or itinerant merchant or vendor” or “transient or itinerant photographer”.

Sec. 10.6.02. Exceptions to Chapter. The provisions of this chapter shall not apply to the following:

Subd. a. Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business;

Subd. b. Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law; and

Subd. c. Bona fide residents of the State selling fruits, vegetables, dressed meats, fowl or farm products that were produced on land within the State, owned or controlled by such vendor.

Sec. 10.6.03. Entrance to Premises Restricted. It shall be unlawful for any peddler to enter upon any private premises when such premises are posted with a sign stating “No Peddlers Allowed” or “No Solicitations Allowed” or other words to such effect.

Sec. 10.6.04. Refusing to Leave. Any peddler who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return to such premises, shall be deemed guilty of a misdemeanor.

Sec. 10.6.05. Misrepresentation. It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality of his goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

Sec. 10.6.06. Hours of Operation. It shall be unlawful for any peddler to engage in the business of peddling within the City between the hours of one-half hour before sunset and 9:00 a.m. the following morning, or at any time on Sundays, except by specific appointment with or invitation from the prospective customer.

Sec. 10.6.07. License Required. It shall be unlawful for any person to engage in business as a peddler within this City without first obtaining a license to do so.

Sec. 10.6.08. License Application. Applicants for a license under this section shall file with the Clerk a sworn application in writing, in duplicate, which shall give the following information:
Subd. a. The name and a description of the applicant;

Subd. b. The permanent home address and full local address of the applicant;

Subd. c. A brief description of the nature of the business and the goods to be sold;

Subd. d. If employed, the name and address of the employer, together with credentials establishing the exact relationship;

Subd. e. The length of time for which the right to do business is desired;

Subd. f. The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time the application is filed, and the proposed method of delivery;

Subd. g. A photograph of the applicant, taken within sixty (60) days immediately prior to the date of filing of the application, which picture shall be two (2) inches by two (2) inches showing the head and shoulders of the applicant in a clear and distinguishing manner;

Subd. h. A statement as to whether or not the applicant has been convicted of any felony, gross misdemeanor or misdemeanor for which a jail sentence is customarily imposed, and, if so, the nature of such crime, the sentence imposed, the place of incarceration and the date of release therefrom;

Subd. i. Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery;

Subd. j. The last five (5) municipalities wherein the applicant has worked before coming to this City; and

Subd. k. Such other relevant information as may be required by the investigation of this applicant.

Sec. 10.6.09. Driver’s License. At the time of filing his application for a license required by this article, the applicant shall present his driver’s license, if he/she has one, to the Clerk.

Sec. 10.6.10. False Information. It shall be unlawful for any person to give any false or misleading information in connection with his application for a license required by this article.

Sec. 10.6.11. Service of Process. Before any license shall issue under this section, there shall also be filed with the Clerk an instrument in writing, signed by the applicant under oath, nominating and appointing the Clerk his true and lawful agent, with full power and authority to acknowledge service of notice of process for and on the behalf of such applicant; and service of summons in any action shall be deemed made when served on the Clerk.
Sec. 10.6.12. Investigation. Upon receipt of an application for a license required by this section, the Clerk shall conduct such investigation of the applicant’s business and moral character as he/she deems necessary for the protection of the public good. The Clerk may refer the application to the police department for investigation and report back. The investigation shall be completed within two weeks of receipt of the application. In the event the application or initial investigation discloses that the applicant has been convicted of a felony, gross misdemeanor, or a misdemeanor for which a jail sentence may be imposed, the investigation or further investigation of the applicant’s qualifications shall comply in all respects with Chapter 364 of Minnesota Statutes, as amended, the “Criminal Offenders Rehabilitation Act of 1974”, including particularly Section 364.03 thereof. Conviction of a crime other than those listed in the previous sentence hereof shall not be considered.

Sec. 10.6.13. Denial. If, as a result of investigation, the applicant’s character or business responsibility is found to be unsatisfactory, the Clerk shall endorse on the application his disapproval and his reasons for the same, and shall notify the applicant in writing of his disapproval of the application, denial of the permit and the reasons for such disapproval and denial. In the event such disapproval is based upon the determinations required by Section 364.03 of Minnesota Statutes, as amended, the written notice of denial of the permit shall comply with Section 364.05 of Minnesota Statutes, as amended.

Sec. 10.6.14. Issuance. If, as a result of investigation, the character and business responsibility of the applicant are found to be satisfactory, the Clerk shall endorse on the application his approval, execute a license addressed to the applicant for the carrying on of the business applied for, and, upon payment of the required fee, as determined by City Council Resolution, deliver the license to the applicant.

Sec. 10.6.15. Contents. Each license issued under this article shall contain the signature and seal of the Clerk and shall show the name, address and photograph of the permittee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such business.

Sec. 10.6.16. Record. The Clerk shall keep a permanent record of all licenses issued under this article.

Sec. 10.6.17. Display. Every peddler having a license issued under the provisions of this section and doing business within the City shall display his license upon the request of any person, and failure to do so shall be deemed a misdemeanor.

Sec. 10.6.18. Duration. Every license issued under the provisions of this section shall be valid for the period of time stated therein, but in no event shall any such license be issued for a period of time in excess of twelve (12) months.
Sec. 10.6.19. Revocation. Any license issued under the provisions of this section may be revoked by the City Council for the violation by the licensee of any applicable provision of this Code, State law or City ordinance, rule or regulation.

SECTION 10.7 TAXICABS.

Sec. 10.7.01. Definitions. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them:

“Doing business” means the operator of a taxicab who:

1. Maintains a garage, office or place of business in the City, or
2. Regularly receives calls at any location in the City for the dispatch of his/her taxicabs.

“Operator” means any person owning or having control of the use of one or more taxicabs.

“Taxicab” means any motor vehicle used in the carrying of persons for hire, whether over a fixed route or not, and whether operating from a street stand or subject to calls from a garage or elsewhere, but excluding government-owned vehicles, vehicles regularly used by undertakers in carrying on their business, or vehicles controlled and regulated by the State public service commission or other regulatory body of the State.

Sec. 10.7.02. Operating Order and Equipment. Any operator of a taxicab doing business in the City shall cause such taxicab to be equipped, at all times he/she is doing business, with taximeters plainly visible to riders thereon and shall maintain any such taxicab in good running order and in full conformance with all applicable Federal and State laws and applicable provisions of this Code.

Sec. 10.7.03. License Required.

Subd. a. No operator shall operate a taxicab within the City limits without first having obtained a taxicab license under the provisions of this section.

Subd. b. Each applicant for a taxicab license shall apply to the City Clerk for a taxicab license upon a form to be provided by the City, and must comply with the following provisions to the satisfaction of the City Council:

1. Be a citizen of the United States;
2. Have attained the age of 18 years and authorized under the applicable laws of the State of Minnesota to operate taxicabs and carry on a taxicab business.
3. Designate each vehicle to be licensed, together with the full name and address of the owner of each vehicle and which person, firm or corporation collects the revenues from the operation of the vehicle.

Subd. c. Proof of liability insurance in the amounts of $100,000.00 per person, $300,000.00 per accident, and $50,000.00 property damage shall be required for this license.

Sec. 10.7.04. License Fee. The City Council, by resolution, shall establish the fee for taxicab licenses. The resolution shall be on file in the City offices. The licensee shall pay the license fee prior to issuance of the license. All licenses shall expire on the last day of June of each year. Any license may be transferred during any year upon the additional payment of a proportional part of the fee by the transferee in addition to the regular fee paid by the transferor when the license is issued, and, upon approval of the City Council of such transfer.

Sec. 10.7.05. Granting of License. If the City Council is satisfied that the public convenience and safety will be served thereby, the Council may grant a license to any such applicant. Each license granted shall be given a number and shall give the number and an adequate description of the taxicab license thereunder. No license shall issue to any person who is not licensed as a chauffeur (or equivalent) under the laws of the State of Minnesota, nor shall any person, whether the owner of the taxicab business or an employee thereof, operate the taxicab for hire without having been licensed by the State of Minnesota as a chauffeur.

Sec. 10.7.06. Penalty. Violation of this provision shall constitute a misdemeanor and be punishable in accordance with this Code.

SECTION 10.8 PLUMBERS.

Sec. 10.8.01. No person, except a duly licensed plumber as hereinafter provided or an authorized City employee shall lay or cause to be laid any surface pipe or other connection in any public street or alley within the corporate limits of the City for connection with any water main or sewer main.

Sec. 10.8.02. Any person desiring a license as a plumber shall make application in writing to the City Clerk of the City and shall be required to furnish the City Council with satisfactory evidence that the applicant is a qualified master licensed plumber by the State of Minnesota and that the applicant is a suitable and proper person to receive such license.

Upon satisfactory evidence having been furnished, the City Council of said City by said applicant of his/her qualifications as having a master license by the State of Minnesota and that the applicant is in all respects a suitable and proper person to receive such license, the City Clerk, upon approval of the City Council may thereupon issue to the said applicant a license as hereinafter provided upon payment of five dollars for license fee.
Sec. 10.8.03. Every such license shall expire as of the 1st day of January of each year after the date of issuance thereof, provided that it may be suspended or revoked at any time before expiration by the City Council upon satisfactory proof of the inexcusable neglect on the part of the licensee or any of his servants or employees to observe the rules and regulations adopted by the City Council relative to the management operation and control of the utilities of the City.

Sec. 10.8.04. Provided, however, that no license shall be issued to any person or persons until a certificate of insurance has been filed with the City Clerk as evidence of insurance liability coverage for protection in at least the following amounts: $50,000.00 for property damage, $100,000.00 for single injuries or death claim, and $300,000.00 total claims arising out of a single accident. The policy shall provide that it is non-cancellable without 15 days notice to the City and the coverage shall be for the term of the license. Each license shall terminate upon termination of the required insurance coverage.

SECTION 10.9 PAWNBROKERS

Sec. 10.9.01. Statement of Policy. Pursuant to the provisions of Minnesota Statute 325J entitled “Pawnbroker Regulation,” the City of Staples has the power, for the purpose of promoting health, safety, morals and welfare, to adopt an ordinance to regulate “pawn transactions” and issue licenses to qualified applicants to enable said applicants to engage in business as a “pawnbroker.”

To help the police department better regulate current and future pawn businesses, decrease and stabilize costs associated with the regulation of the pawn industry, and increase identification of criminal activities through the timely collection and sharing of pawn transaction information, this chapter also implements and establishes the required use of the automated pawn system (APS).

Sec. 10.9.02. Definitions. As used in this Chapter, the following terms have the meanings given to them:

A. “Pawnbroker” means a person engaged, in whole or in part, in the business of lending money on the security of pledged goods left in pawn, or in the business of purchasing tangible personal property to be left in pawn on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time. To the extent that a pawnbroker’s business includes buying personal property previously used, rented or leased, or selling it on consignment, the provisions of this chapter shall be applicable.

B. “Pawnshop” means the location at which or premises in which a pawnbroker regularly conducts business.

C. “Pawn transaction” means any loan on the security of pledged goods or any purchase of pledged goods on the condition that the pledged goods are left with
the pawnbroker and may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

D. “Person” means an individual, partnership, corporation, limited liability company, joint venture, trust, association, or any other legal entity, however organized.

E. “Pledged goods” means tangible personal property other than chosen in action, securities, bank drafts, or printed evidence of indebtedness, that are purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction.

F. “Reportable transaction” means every transaction conducted by a pawnbroker in which merchandise is received through a pawn, purchase, consignment or trade, or in which a pawn is renewed, extended or redeemed, or for which a unique transaction number or identifier is generated by their point-of-sale software, or an item is confiscated by law enforcement, is reportable except:

1. The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer or wholesaler having an established permanent place of business, and the retail sale of said merchandise, provided the pawnbroker must maintain a record of such purchase or consignment that describes each item, and must mark each item in a manner that related it to that transaction record.

2. Retail and wholesale sales of merchandise originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

G. “Billable transaction” means every reportable transaction conducted by a pawnbroker except renewals, redemptions or extensions of existing pawns on items previously reported and continuously in the licensee’s possession, voided transactions, and confiscations

Sec. 10.9.03. License Required.

A. No person shall engage in the business of pawnbroker within the City without first obtaining a license from the City.

B. Any pawn transaction made without the benefit of a license is void.

C. Licenses shall be issued only upon approval by the City Council.

D. A separate license is required for each place of business. More than one license may be issued to a person if all provisions of this Section and state law are complied with.
E. No expiration, revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any pledgor.

F. A licensee obtains no vested interest in a license issued under this Section and the City reserves the right to not renew the same.

Sec. 10.9.04. License Term.

A. Each license shall be granted for a calendar year and shall expire at the conclusion of business on December 31 of the license year.

Sec. 10.9.05. Licensee Ineligibility.

A. No license shall be issued to a person if the applicant:

   1. Is a minor at the time the application is filed.

   2. Is not a citizen of the United States.

   3. Is not of good moral character and repute.

   4. Has been convicted of any crime directly related to the occupation licensed as prescribed by Section 354.03 Subd. 2, unless the person has shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensee under Minnesota Chapter 325J, this Ordinance and as prescribed by Minn. Stat. § 364.03, Subd. 3.

B. No license shall be granted to an applicant who fails to provide all information required in Section 10.9.07 or who provides false or misleading information in the application.

C. No license shall be granted for a location where a building is under construction or otherwise is not ready for occupancy.

D. No license shall be granted on any premises that the Council determines is unsuitable for this type of business. This determination shall not be made by the Council except after a public hearing following notice to the applicant.

E. No license shall be issued to an applicant that is a partnership if such applicant has any general partner or managing partner in violation of, or who is non-qualifying, under this Section.

F. No license shall be issued to an applicant that is a corporation or other business organization if such business has a manager, proprietor or agent in charge of the
organization/business to be licensed if said person or persons are in violation of, or are non-qualifying, under this Section.

Sec. 10.9.06. Change in Ownership.

A. Licenses issued hereunder are not assignable and any change, directly or beneficially, in the ownership of any licensed pawnshop shall require the application for a new license, and the applicant must satisfy all eligibility requirements and pay all licensing fees.

Sec. 10.9.07. Application Content.

A. Any person desiring a pawnbroker’s license shall file with the City Administration an application in writing upon a form furnished by the City Administrator’s Office. Such applications shall require that any or all of the following information be set forth upon the application:

1. If the applicant is a natural person:

   a. The name, place, and date of birth, resident street address, and telephone number of the applicant;

   b. Whether the applicant is a citizen of the United States;

   c. Whether the applicant has ever used or has been known by a name other than the applicant’s name, and if so, the name or names used and information concerning dates and places where used;

   d. The name of the business if it is to be conducted under a designation, name, or style other than the name of the applicant and a copy of the certificate as required by Minn. Stat. § 333.01;

   e. The street addresses at which the applicant has lived during the preceding five (5) years;

   f. The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding five (5) years and the name(s) and address(es) of the applicant’s employer(s) and partner(s), if any, for the preceding five (5) years;

   g. Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance or law other than traffic laws. If so, the applicant shall furnish information as to the time, place, and offense for which the convictions were had;

   h. The physical description of the applicant.
2. If the applicant is a partnership:

   a. The name(s) and addresses of all general and limited partners and all information concerning each general partner required in subpart (1) of this Section;

   b. The name(s) of managing partner(s) and the interest of each partner in the pawnbroker business;

   c. A copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to Minn. Stat. 333.01, a copy of such certificate shall be attached to the application.

3. If the applicant is a corporation or other organization:

   a. The name of the corporation or business form, and if incorporated, the State of incorporation;

   b. A true copy of the Certificate of Incorporation, Articles of Incorporation, or Association Agreement, and By-laws shall be attached to the application. If the applicant is a foreign corporation, a certificate of Authority as required by Minn. Stat. 303.06, shall be attached;

   c. The name of the manager(s), proprietor(s), other agent(s) in charge of the business, and all owners of 50% or more of the business, and all information concerning each manager, proprietor, agent or owner as required in subpart (1) of this Section.

4. For all applicants:

   a. Whether the applicant holds a current pawnbroker license from any other governmental unit and whether the applicant is licensed under Minn. Stat. § 471.924;

   b. Whether the applicant has previously been denied a pawnbroker license from any other governmental unit, or had a license revoked or canceled;

   c. The names, resident street addresses, and business addresses of three references who are of good moral character and who are not related to the applicant and not holding any ownership in the premises or business, who may attest to the character of the applicant, or manager;

   d. The location of the business premises and a diagram or blueprint of the premises to be licensed;
e. Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid;

f. Whether the application is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If the plans or design are already on file with City of Staples, no plans need to be submitted;

g. Such other information as the City Council or issuing authority may require.

Sec. 10.9.08. Bonds, Insurance, Renewals and Transfers.

A. Before a license will be issued, every applicant must submit to the City Administrator a bond with a corporate surety in the amount of $5,000.00 for approval by the Council. All bonds shall be conditioned that the principal will observe all laws in relation to such licensed business, including in particular, compliance with each and every requirement of Section 10.9; will pay when due all fees, taxes, penalties and other charges provided by law; and will account for the delivery to any person legally entitled thereto any goods of that person that have come into the principal’s possession through the principal’s business as a pawnbroker, or, in lieu thereof, will pay the reasonable value of the goods in money to the person. The bond shall contain a provision that it may not be canceled except upon thirty (30) days written notice to the City, which shall be served upon the licensing authority. All bonds shall be for the period of the license year. The amount specified in the bond required is declared to be a penalty; provided, however, that the surety thereof shall not be liable for any amount in excess of the penal amount of the bond. Such bond shall run to the City, as obligee, and in the event of a forfeiture of any such bond for violation of the said conditions, the District Court of Todd County may forfeit the penal sum of the said bond to the City.

B. An application for renewal of a pawnbroker’s license shall require the applicant to re-verify or update all of the information contained on the original license application.

C. An applicant seeking to obtain approval for the transfer of a pawnbrokers license that is currently held by another person or organization, shall complete and furnish to the City Administrator an application form as in the case of an original application for the same type and class of license. In addition, the current license holder must sign the application form indicating its approval of the transfer.

Sec. 10.9.09. City Codes.
A. The licensed business shall at all times be located and operated in compliance with all existing requirements of the zoning, building, fire, health and all other applicable Codes of the City of Staples.

**Sec. 10.9.10. Execution of Application and Investigation of Applicant.**

A. The application shall be signed, verified and sworn to at the City Administrator’s Office. If the application is that of a natural person, it shall be signed and sworn to by such person; if that of a corporation, by an officer thereof authorized to execute documents on behalf of the corporation; if that of a partnership, by one of the general partners; and if that of an unincorporated association, by the manager or managing officer thereof.

B. Each application shall be referred by the City Administrator to the Chief of Police, the Building Inspector and the Fire Chief for investigation and comment. Each such official shall conduct such investigation as the official deems necessary to determine whether the statements contained in the application accurately reflect the facts as discovered in the investigation, and whether or to what extent the proposed premises or the applicant appear to have violated any laws or regulations for which the agency has enforcement responsibility.

C. All applications with reports, as well as recommendations if deemed necessary, shall be returned to the City Administrator and shall thereafter be presented to the Council. The Council may order and conduct such additional investigation as it deems necessary.

**Sec. 10.9.11. Approval and Issuance.**

A. An application for a pawnbroker’s license shall be deemed completed when all of the information required on the application form has been provided to the City Administrator; all fees, bonds, insurance documents and other required documentary materials have been paid or filed, as appropriate with the City Administrator; and all investigative reports have been submitted to the City Administrator.

B. At the first meeting of the Council following receipt of the afore-described documents and fees, the City Administrator shall present same to the Council. The Council, if it deems the applicant is suitable and proper, shall by motion approve the issuance of the license to the applicant.

**Sec. 10.9.12. License and Application Fees.**

A. The annual license fees for licenses issued under this chapter shall be: $200.00.
B. The license fee shall be paid in full when the application is filed. Said fee shall be refunded if the application is withdrawn before Council approval or if the Council rejects the application except, however, in the instance where the rejection is for a willful misstatement in the license application.

C. The license fee shall be paid annually, the initial fee to be pro-rated from the date of issuance.

D. All new applicants shall pay a non-refundable initial investigative fee in the amount of $50.00 to cover the costs involved in verifying the matters set forth in the license application and to cover the expense of any investigation needed to assure compliance with this Section and other applicable laws. Applicants who are reapplying for their annual license shall pay a $25.00 investigative fee to cover the costs of re-verifying application data and compliance with applicable laws since the initial application.

Sec. 10.9.13. Records Required.

A. Transaction Records. At the time of any reportable transaction other than renewals, extensions, redemptions or confiscations, every licensee must immediately record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the police department:

1. A complete and accurate description of each item including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item;

2. The full name, current residence address, current residence telephone or cell phone number, date of birth and accurate description of the pledgor or seller, including sex, height, weight, race, color of eyes, and color of hair;

3. Date and time of pawn or purchase transaction, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee’s records;

4. The identification number and State of issue from one of the following forms of identification of the seller or pledgor: current valid Minnesota driver’s license, current valid Minnesota identification card, or current valid photo identification card issued by another State or a province of Canada;

5. The purchase price, amount of money loaned upon, or pledged therefore;

6. The maturity date of the pawn transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges;
7. The signature of the person identified in the transaction;

8. Effective sixty (60) days from the date of notification by the police department of acceptable video standards, the licensee must also take a color photograph or color video recording of:

   a. Each customer involved in a billable transaction.

   b. Every item pawned or sold that does not have a unique serial or identification number permanently engraved or affixed.

If a photograph is taken, it must be at least two (2) inches in length by two (2) inches in width and must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which they relate. Such photographs must be available to the chief of police, or the chief’s designee, upon request. The major portion of the photograph must include an identifiable front facial image of the person who pawned or sold the item. Items photographed must be accurately depicted. The licensee must inform the person that he/she is being photographed by displaying a sign of sufficient size in a conspicuous place in the premises. If a video photograph is taken, the video camera must record the person pawning or selling the item so as to include an identifiable image of that person’s face. Items photographed by video must be accurately depicted. Video photograph must be electronically referenced by time and date so they can be readily matched and correlated with all other records of the transaction to which they relate. The licensee must inform that he/she is being videotaped by displaying a sign of sufficient size in a conspicuous place on the premises. The licensee must keep the exposed videotape for three (3) months.

9. Digitized Photographs. Effective sixty (60) days from the date of notification by the police department, licensees must fulfill the color photograph requirements in this section by submitting them as digital images, in a format specified by the issuing authority, electronically cross-referenced to the reportable transaction they are associated with. Notwithstanding the digital images may be captured from required video recordings, this provision does not alter or amend the requirements in subdivision (8).

10. Renewals, Extensions, Redemptions and Confiscations. For renewals, extensions, redemptions and confiscations, the licensee shall provide the original transaction identifier, the date of the current transaction, and the type of transaction.

   B. Receipt Required. Every licensee must provide a receipt to the party identified in every reportable transaction except voids and confiscations and must maintain a duplicate of that receipt for three (3) years. The receipt must include all the
transaction record information required in 10.9.13(A) 1 through 7, and at least the following information:

1. The name, street address, mailing address if different from the street address, and the phone number of the pawnbroker.

2. The statement that “Any personal property pledged to a pawnbroker within this State is subject to sale or disposal when there has been no payment made on the account for a period of not less than 60 days past the date of the pawn transaction, renewal, or extension; no further notice is necessary. There is no obligation for the pledgor to redeem pledged goods”;

3. The statement that “The pledgor of this item attests that it is not stolen, it has no liens or encumbrances against it, and the pledgor has the right to sell or pawn the item”;

4. The statement that “This item is redeemable only by the pledgor to whom the receipt was issued, or any person identified in a written and notarized authorization to redeem the property identified in the receipt, or a person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor. Written authorization for release of property to person other than the original pledgor must be maintained along with the original transaction record”; and

5. A blank line for the pledgor’s signature.

C. The pledgor shall sign the pawn ticket and receive an exact copy of the same.

Sec. 10.9.14. Inspection of Records; Retention.

A. Transaction records must at all reasonable times be open to inspection by the police department. Data entries shall be retained for at least three (3) years from the date of transaction. Entries of required digital images shall be retained a minimum of ninety (90) days.

Sec. 10.9.15. Daily Reports to Police.

A. Effective no later than sixty (60) days after the police department provides licensees with the current version of the Automated Pawn System Interchange File Specification, licensees must submit every reportable transaction to the police department daily in the following manner:

1. Licensees must provide to the police department all reportable transaction information by transferring it from their computer to the Automated Pawn System via modem using the current version of the Automated Pawn System Interchange File Specification. All required records must be transmitted
completely and accurately after the close of business each day in accordance with standards and procedures established by the issuing authority. Any transaction that does not meet the Automated Pawn System Interchange File Specification must be corrected and resubmitted the next business day. The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs patrons that all transactions are reported to the police department daily.

B. Billable Transaction Fees. Licensees will be charged for each billable transaction reported to the police department. The billable transaction fee shall be set by resolution.

1. If a licensee is unable to successfully transfer the required reports by modem, the licensee must provide the police department, upon request, printed copies of all reportable transactions along with the video tape(s) for that date, by noon the next business day.

2. If the problem is determined to be in the licensee’s system and is not corrected by the close of the first business day following the failure, the licensee must continue to provide the required reports as detailed in Section (B)(1), and shall be charged a $20.00 reporting failure penalty, daily, until the error is corrected; or

3. If the problem is determined to be outside the licensee’s system, the licensee must continue to provide the required reports in (B)(1), and resubmit all such transactions via modem when the error is corrected.

4. If a licensee is unable to capture, digitize or transmit the photographs required in 10.9.13(9), the licensee must immediately take all required photographs with a still camera, cross-reference the photographs to the current transaction, and make the pictures available to the police department upon request.

5. Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed.

6. (B)(1) through (3) notwithstanding, the police department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.

Sec. 10.9.16. Effect of Non-redemption.

A. A pledgor shall have no obligation to redeem pledged goods or make any payment on a pawn transaction. Pledged goods not redeemed within at least 60 days of the date of the pawn transaction, renewal, or extension shall automatically
be forfeited to the pawnbroker, and qualified right, title, and interest in and to the goods shall automatically vest in the pawnbroker.

B. The pawnbroker’s right, title, and interest in the pledged goods under paragraph (A) is qualified only by the pledgor’s right, while the pledged goods remain in possession of the pawnbroker and not sold to a third party, to redeem the goods by paying the loan plus fees and/or interest accrued up to the date of redemption.

Sec. 10.9.17. Holding Period.

A. Any item purchased or accepted in trade by a licensee must not be sold or otherwise transferred for thirty (30) days from the date of the transaction. An individual may redeem an item seventy-two (72) hours after the item was received on deposit, excluding Sundays and legal holidays.

B. Any person pledging, pawning or depositing an item for security must have a minimum of sixty (60) days from the date of that transaction to redeem the item before it may be forfeited and sold. During the sixty (60) day period, items may not be removed from the licensed location except as provided in 10.9.27(A). Licensees are prohibited from redeeming any item to anyone other than the person to whom the receipt was issued or, to any person identified in a written and notarized authorization to redeem the property identified in the receipt, or to a person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor, or with approval of the police license inspector. Written authorization for release of property to persons other than original transaction record must be in accordance with 10.9.26(A).

Sec. 10.9.18. Permitted Charges.

A. The pawnbroker is entitled to contract for such charges as is permitted by Minn. Stat. § 325J.07 and is subject to the terms and requirements therein contained as well as future amendments to same.

Sec. 10.9.19. Police Order to Hold Property.

A. Investigative Hold. Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within seventy-two (72) hours and will remain in effect for fifteen (15) days from the date of initial notification, or until the investigative order is canceled, or until an order to hold or confiscate is issued, pursuant to 10.9.19(B) or (C), whichever comes first.

B. Order to Hold. Whenever the chief of police, or the chief’s designee, notifies a licensee not to sell an item, the item must not be sold or removed from the
licensed premises until authorized to be released by the chief or the chief’s designee. The order to hold shall expire ninety (90) days from the date it is placed unless the chief of police or the chief’s designee determines the hold is still necessary and notifies the licensee in writing.

C. Order to Confiscate. If an item is identified as stolen or evidence in a criminal case, the chief or chief’s designee may:

1. Physically confiscate and remove it from the shop, pursuant to a written order from the chief or the chief’s designee, or

2. Place the item on hold or extend the hold as provided in 10.9.19(B), and leave it in the shop.

When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.

When an order to hold/confiscate is no longer necessary, the chief of police or chief’s designee shall so notify the licensee.

Sec. 10.9.20. Labels Required.

A. Licensees must attach a label to every item at the time it is pawned, purchased or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop’s records, the transaction date, the name of the item and the description or the model and serial number of the item as reported to the police department, whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be re-used.

Sec. 10.9.21. Hours of Operation.

A. No pawnbroker shall keep the pawnbroker business open for the transaction of business on any day of the week before 9 a.m. or after 9 p.m. and shall not be open for the transaction of business on Sundays, New Year’s Day, Fourth of July Day, Thanksgiving Day and Christmas Day.

Sec. 10.9.22 Minors.

A. The pawnbroker will not purchase or receive personal property of any nature on deposit or pledge from a person under the age of 18 years.

Sec. 10.9.23. Inspection of Items.
A. The pawnbroker shall, at all times during the term of the license, allow the Staples Police Department and other law enforcement authorities associated with the Staples Police Department to enter the premises where the pawnbroker business is located during normal business hours, except in an emergency, for the purpose of inspecting such premises and inspecting the items, wares, and merchandise and records therein for the purpose of locating items suspected or alleged to have been stolen or otherwise improperly disposed of.

Sec. 10.9.24. License Display.

A. A license issued under this Chapter must be posted in a conspicuous place in the premises for which it is used. Also, the licensee must display a sign, in a conspicuous place in the premises and of a sufficient size, which informs all patrons that all transactions are reported to the Staples Police Department.

Sec. 10.9.25. Prohibitions.

A. A pawnbroker and the agents and employees of the pawnbroker shall not:

1. Make any false entry in the records of pawn transaction or use any pawn ticket not meeting the requirements of this Chapter;

2. Falsify, obliterate, destroy or remove from the place of business the records, books, or accounts relating to the licensee’s pawn transactions;

3. Refuse to allow the appropriate law enforcement agency, the attorney general or any other duly authorized State or Federal law enforcement to inspect the pawn records of any pawn goods in the person’s possession during the ordinary hours of business or other times acceptable to both parties;

4. Fail to maintain a record of each pawn transaction for three years;

5. Accept a pledge or purchase property from a person under the age of 18;

6. Make any agreement requiring the personal liability of a pledgor or seller, or waiving any provisions of this Chapter, or providing for a maturity date less than one month after the pawn;

7. Fail to return pledged goods to a pledgor or seller, or provide compensation as set forth in Section 10.9.26, upon payment of the full amount due the pawnbroker unless either the date of redemption is more than 60 days past the date of the pawn transaction, renewal or extension and the pawnbroker has legally sold the pledged goods or the pledged goods have been taken into custody by a court or a law enforcement officer or agency;
8. Sell or lease, or agree to sell or lease, pledged or purchased goods back to the pledgor or seller in the same, or a related, transaction;

9. Sell or otherwise charge for insurance in connection with a pawn transaction;

10. Sell pledged goods before the time to redeem has expired;

11. Fail to maintain order in the business;

12. Keep, possess, or operate, or permit the keeping, possession, or operation on the licensed premises of dice, slot machines, roulette wheels, punch boards, blackjack tables, or pinball machines, which return coins or slugs, chips, or tokens of any kind, which are redeemable in merchandise or cash;

13. Accept any item of property that contains an altered or obliterated serial number or “Operation Identification” number or any item or property whose serial number has been removed;

14. Accept items of property without the seller or pledgor providing a proper form of identification.

B. No person may pawn, pledge, sell, consign, leave, or deposit any article of property not their own; nor shall any person pawn, pledge, sell, consign, leave, or deposit the property of another, whether with permission or without; nor shall any person pawn, pledge, sell, consign, leave, or deposit any article of property in which another has a security interest with any licensee.

C. No person seeking to pawn, pledge, sell, consign, leave, or deposit any article of property with any licensee shall give a false or fictitious name; nor give a false date of birth; nor give a false or out of date address of residence or telephone number; nor present a false or altered identification, or the identification of another, to any licensee.


A. The date by which a pawned item of property must be redeemed by the pledgor, without risk that the item will be sold, must be a day in which the pawnbroker is open for regular business.

B. Any person to whom the receipt for pledged goods was issued, or any person identified in a written and notarized authorization to redeem the pledged goods identified in the receipt, or any person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor shall be entitled to redeem or re-purchase the pledged goods described on the ticket. In the event the goods are lost or damaged while in possession of the pawnbroker, the pawnbroker shall compensate the pledgor, in cash or replacement goods acceptable to the pledgor,
for the fair market value of the lost or damaged goods. Proof of compensation shall be a defense to any prosecution or civil action.

Sec. 10.9.27. Pawnshop Location.

A. A license under this Chapter authorizes the licensee to carry on its business only at the permanent place of business designated in the license. However, upon written request, the chief of police or chief’s designee may approve an off-site locked and secured storage facility. The licensee shall permit inspection of the facility in accordance with 10.9.23(A). All provisions of this Chapter regarding record keeping and reporting apply to the facility and its contents. Property shall be stored in compliance with all provisions of the City Code. The licensee must either own the building in which the business is conducted, or have approval of an off-site storage facility or have a lease on the business premise that extends for more than six (6) months.

Sec. 10.9.28. Suspension or Revocation.

A. The City Council may suspend or revoke a license issued under this Chapter upon a finding of a violation of:

1. Any of the provisions of this Chapter;
2. Any State statute regulating pawnbrokers; or
3. Any State or local law relating to moral character and repute; or
4. A conviction of the pawnbroker for theft or receiving stolen property.

B. Whenever it appears to the Council that adequate grounds exist for the suspension or revocation of a specific pawnbroker’s license, the Council shall by resolution specify the nature of the alleged grounds and order that a hearing on the matter be held as hereinafter provided.

C. A revocation or suspension by the City Council shall be preceded by written notice to the licensee and a public hearing. The written notice shall be mailed to the address listed on the application at least ten (10) days prior to the hearing and shall designate the time and place of hearing and shall state the nature of the charges against the pawnbroker.

D. Upon a finding that the licensee has violated any of the provisions of this Chapter or any State statutes designated in this section, the Council may suspend the license for up to the 60 days or revoke the license.

Sec. 10.9.29. Severability.
A. If any section or portion of any section of this Chapter is deemed invalid or unconstitutional by a Court, such invalidity or unconstitutionality shall not affect the validity of other sections or portions of sections of this Chapter.

SECTION 10.10 ESTABLISHMENT OF THE LOCATION AND LICENSING OF SEXUALLY ORIENTED BUSINESSES.

WHEREAS, the City of Staples, Minnesota, (the “City”) has reviewed and analyzed numerous studies, reports, articles, judicial decisions and the experience and legislative findings of other cities around the country concerning the impacts or “secondary effects” of sexually orientated businesses and the sale, distribution, and display of sexually oriented materials (collectively, “Sexually Oriented Business Activities”) on the areas in which such Activities are located or take place; and

WHEREAS, Sexually Oriented Business Activities can cause or contribute significantly to increases in criminal activity in the areas in which they are located or take place, thereby taxing crime prevention, law enforcement, and public health services; and

WHEREAS, nude dancing and other similar conduct provided by Sexually Oriented Business Activities encourages prostitution, increases the frequency of sexual assaults, attracts or encourages other related criminal activity, increases the public health and safety risks associated with Sexually Oriented Business Activities and otherwise causes or contributes significantly to the adverse impacts and secondary effects of Sexually Oriented Business Activities on the areas in which such Activities are located or take place; and

WHEREAS, Sexually Oriented Business Activities can cause or contribute significantly to the deterioration of residential neighborhoods, can impair the character and quality of such neighborhoods and the housing located therein, and can inhibit the proper maintenance and growth of such neighborhoods, limiting or reducing the availability of quality, affordable housing for area residents and reducing the value of property in such areas; and

WHEREAS, Sexually Oriented Business Activities can undermine the stability of other established business and commercial uses in the areas in which Sexually Oriented Business Activities are located or take place and can cause or contribute significantly to the deterioration of such other business and commercial uses, thereby causing or contributing to a decline in such uses, an inhibition on business and commercial growth, and a resulting adverse impact on local government revenues and property values; and

WHEREAS, Sexually Oriented Business Activities can have a dehumanizing and distracting influence on young people and students attending schools, can diminish or destroy the enjoyment and family atmosphere of persons using parks, playgrounds, forest preserves, and other public recreational areas, can interfere with or even destroy the spiritual experience of persons attending church, synagogue, or other places of worship, and can interfere with or even destroy the opportunity for solemn and respectful contemplation at cemeteries and similar facilities; and
WHEREAS, the presence of Sexually Oriented Business Activities is perceived by the public generally and by neighboring business owners and residents as a indication that the area in which such Activities occur or take place is in decline and deteriorating, a perception that can quickly lead to such decline and deterioration, prompting businesses and residents to flee the affected area to avoid the consequences of such decline and deterioration; and

WHEREAS, the exterior appearance, including signage, of Sexually Oriented Business Activities can have an adverse impact on young people and students, can contribute to the decline in property values associated with Sexually Oriented Business Activities, and can otherwise cause or contribute significantly to the adverse impacts and secondary effects of Sexually Oriented Business Activities on the areas in which such activities are located or take place; and

WHEREAS, the City has the power and authority to adopt and enforce the zoning regulations established in this Ordinance pursuant to (i) its general police powers to protect the public health, safety, morals, and general public welfare; and (ii) all other applicable provisions of law;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Staples as follows:

Sec. 10.10.01. Definitions.

A. Adult Arcade means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas”.

B. Adult Bookstore, Adult Novelty Store or Adult Video Store means:

1. A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

   a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” or

   b. Instruments, devices, or paraphernalia, which are designed for use in connection with “specified sexual activities”.
2. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as Adult Bookstore, Adult Novelty Store, or Adult Video Store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

3. Notwithstanding the foregoing, a commercial establishment that offers for sale or rental any of the items listed in paragraph 1.a. above will not be considered to have as one of its principal business purposes the offering for sale or rental for consideration the specified materials that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” provided all of the following conditions are met:

   a. Total gross revenues from the sale or rental of any of the items listed in paragraph 1.a. does not exceed ten percent (10%) of the commercial establishment’s gross revenue;

   b. Total gross square footage of display space and stock area devoted to the sale or rental of any of the items listed in paragraph 1.a. does not exceed ten percent (10%) of the commercial establishment’s total square footage;

   c. Display of any of the items listed in paragraph 1.a. is in a separate room or area restricted only to persons 18 years old or older and is closely monitored by management and/or employees of the commercial establishment to insure that no individual under the age of 18 enters the room or area where the items listed in paragraph 1.a. are displayed or stored;

   d. No electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained on the premises of the establishment to show images of items listed in paragraph 1.a. to any customers or potential customers of the commercial establishment.

   e. Only employees or management of the commercial establishment who are 18 years old or older are permitted to enter the area where the items listed in paragraph 1.a. are stored, processed or displayed for customers or potential customers of the commercial establishment.

C. Adult Cabaret means a nightclub, bar, restaurant, or similar commercial establishment that allows anywhere on the business premises:

   1. Persons who appear in a state of nudity or semi-nude; or
2. Live performances that are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities;” or

3. Films, motion pictures, video cassettes, slides or other photographic reproductions, which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

D. Adult Motel means a hotel, motel or similar commercial establishment that:

1. Offers accommodations to the public, for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas,” and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or

2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

E. Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown, which are characterized by the depiction or description of “specified sexual activities.”

F. Adult Theater means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or semi-nude, or live performances, which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

G. Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

H. Escort Agency means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

I. Establishment means and includes any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

3. The additions of any sexually oriented business to any other existing sexually oriented business; or

4. The relocation of any sexually oriented business.

J. Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

K. Nude Model Studio means any place where a person who appears semi-nude, in a state of nudity, or who displays “specified anatomical areas” and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Minnesota or a college, junior college or university supported entirely or in part by public taxation; a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

1. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and

2. Where in order to participate in a class a student must enroll at least three days in advance of the class; and

3. Where no more than one nude or semi-nude model is on the premises at any one time.

L. Nudity or State of Nudity means the showing of the human male or female genitals, pubic area, vulva, anus with less than a fully opaque covering or the showing of the covered male genitals in a discernibly turgid state.

M. Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

N. Semi-Nude or in a Semi-Nude Condition means the showing of the female breast below a horizontal line across the tip of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard,
bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

O. Sexual Encounter Center means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

2. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

P. Sexually Oriented Business means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

Q. Specified Anatomical Areas means:

1. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

2. Less than completely and opaquely covered human genitals, pubic areas, vulva or anus.

R. Specified Criminal Activity means any of the following offenses: Any unlawful lewd, indecent, or immoral conduct, including specifically, but without limitation, any of the lewd, indecent, or immoral criminal acts specified in any of the following statutes:

1. Sections 609.293 to 609.365 of the Minnesota Criminal Code (Sex Offenses).

2. Sections 617.23 to 617.296 of the Minnesota Criminal Code (Obscenity Statute).

3. Sections 152.01 to 152.21 of the Minnesota Criminal Code (Controlled Substances law).

S. Specified Sexual Activities means any of the following:

1. Fondling or other erotic touching of human genitals, pubic region or anus.

2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy.

3. Masturbation, actual or simulated.
4. Human genitals in a state of sexual stimulation, arousal, or tumescence.

5. Excretory functions as part of or in connection with any of the activities set forth in Paragraphs 1, 2, 3 or 4 of this definition.


T. Substantial Enlargement of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.

U. Transfer of Ownership or Control of a sexually oriented business means and includes any of the following:

1. The sale, lease, or sublease of the business;

2. The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

3. The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Sec. 10.10.02. Location.

A. Location. No sexually oriented business may be located or operated within 500 feet of:

1. A church, synagogue, mosque, temple or building that is used primarily for religious worship and related religious activities.

2. A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school.

3. A boundary of a residential district as defined in the City of Staples Zoning Code.

4. A public park or recreational area that has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts,
pedestrian/bicycle paths, wilderness areas, or other similar public land within the City that is under the control, operation, or management of the City park and recreation authorities.

5. A public theater.

6. A shopping center.

7. An airport.

B. Location Near Other Sexually Oriented Businesses. The operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business may not occur within 1,000 feet of another sexually oriented business. In addition, there shall not be more than one sexually oriented business within a block front even if said block is greater than 1,000 feet in length.

C. Multiple Uses or Enlargement of Uses. The operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business, is prohibited.

D. Measurement from Certain Uses. For the purpose of subsection A. of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection A. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section. Such distance shall be measured across property lines, regardless of ownership of the property.

E. Measurement Between Sexually Oriented Business. For purposes of subsection B. of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

F. Sign Restrictions. In order to protect children from exposure to lurid signs and materials and in order to preserve the value of property surrounding sexually oriented businesses, the following sign regulations shall apply to all sexually oriented business in the City.

1. All signs shall be flat wall signs. No signs shall be freestanding, located on the roof, or contain any flashing lights, moving elements, or electronically or mechanically changing messages. No sign shall contain any message or
image that identifies specified sexual activities or specified anatomical areas as defined herein.

2. The amount of allowable sign area shall be one (1) square foot of sign area per foot of lot frontage on a street, not to exceed eighty (80) square feet.

3. No merchandise, photos, or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or public right-of-way adjoining the building or structure in which the sexually oriented business is located.

4. No signs shall be placed in any window. A one (1) square foot sign may be placed on the door to state hours of operation and admittance to adults only.

Sec. 10.10.03. License Required.

No person shall own or operate a sexually oriented business within the City of Staples unless such person is currently licensed under this Ordinance.

A. License Application

Application for a license under this Ordinance shall be made on a form supplied by issuing authority and shall require the following information:

1. All Applicants. For all applicants:

   a. Whether the applicant is a natural person, corporation, partnership, or other form of organization.

   b. The legal description of the premises to be licensed, along with a floor plan of the premises. The floor plan of the premises shall detail all internal operations and activities, including a statement of the total floor space occupied by the business. The floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimension of the interior of the premises to an accuracy of plus or minus six (6) inches.

   c. The name and street address of the business. If the business is to be conducted under a designation, name, or style other than the name of the applicant, a certified copy of the certificate required by Minn. Stat. § 333.01 shall be submitted.

2. Applicants Who are Natural Persons. If the applicant is a natural person:

   a. The name, place and date of birth, street and city address, and phone number of the applicant.
b. Whether the applicant has ever used or has been known by a name other than the applicant’s name, and if so, the name or names used and information concerning dates and places where used.

c. The street and city addresses at which the applicant has lived during the preceding two (2) years.

d. The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding two (2) years and name(s) and address(es) of the applicant’s employer(s) and partner(s), if any, for the preceding two (2) years.

e. Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a petty misdemeanor traffic ordinance. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had.

3. Applicants that are Partnerships. If the applicant is a partnership:

   a. The name(s) and address(es) of all general partners and all of the information concerning each general partner that is required of applicants in subpart 2. of this Section.

   b. The name(s) of the managing partner(s) and the interest of each partner in the business.

   c. A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to Minn. Stat. § 333.01, a certified copy of such certificate shall be attached to the application.

4. Corporate or Other Applicants. If the applicant is a corporation or other organization:

   a. The name of the corporation or business form, and if incorporated, the State of incorporation.

   b. A true copy of the Certificate of Incorporation, Articles of Incorporation or Association Agreement and By-laws shall be attached to the application. If the applicant is a foreign corporation, a Certificate of Authority as required by Minn. Stat. § 303.06, shall be attached.

   c. The name of the manager(s), proprietor(s), or other agent(s) in charge of the business and all of the information concerning each manager,
B. License Application Execution

If the application is that of a natural person, the application shall be signed and sworn to by that person; if of a corporation, by an officer thereof; if of a partnership, by one of the general partners; if of an unincorporated association, by the manager or managing officer thereof.

C. License Application Verification

Applications of licenses under this Ordinance shall be submitted to the City Council (hereinafter referred to as the “Issuing Authority”). Within twenty (20) calendar days of receipt of a complete application and payment of all license application fees, agents and/or employees of the Issuing Authority shall verify any and all of the information requested of the applicant in the application, including the ordering of criminal background checks, and conduct any necessary investigation to assure compliance with this Ordinance.

D. License Application Consideration

No later than ten (10) calendar days after the completion of the license application verification and investigation by the Issuing Authority, or its agents and employees, the issuing Authority shall accept or deny the license application in accordance with this Ordinance. If the application is denied, the Issuing Authority shall notify the applicant of the determination in writing. The notice shall be mailed by certified and regular mail to the applicant at the address provided on the application form and it shall inform the applicant of the applicant’s right within twenty (20) calendar days of receipt of the notice by the applicant, to request an appeal of the determination for reconsideration by the City Council or to immediately challenge the determination in a court of law. If an appeal to the City Council is timely received, the hearing before the City Council shall take place within twenty (20) calendar days of the receipt of the appeal. If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises by the City Planning Department. During the application consideration process prescribed herein an applicant operating a business not previously subject to the license provisions of this Ordinance may remain operating pending the outcome of the application consideration by the Issuing Authority.

E. License Fees

1. Application Fee.
a. The license application fee shall be Five Hundred Dollars ($500.00).

b. The application license fee shall be paid in full before the application for a license is considered. All fees shall be paid to the Issuing Authority for deposit into the general fund of the City. Upon rejection of any application for a license or upon withdrawal of application before approval of the Issuing Authority the license fee shall be refunded to the applicant.

c. When the license is for premises where the building is not ready for occupancy, the time fixed for computation of the license fee of the initial license period shall be ninety (90) days after approval of the license by the Issuing Authority or upon the date an occupancy permit is issued for the building.

2. Investigation Fee

An applicant for any license under this Division shall deposit with the Issuing Authority, at the time an original application is submitted, $500.00 to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this Division. The investigation fee shall be non-refundable.

F. Persons and Locations Ineligible for a License

The Issuing Authority shall issue a license under this Division to an applicant unless one (1) or more of the following conditions exists:

1. The applicant is not eighteen (18) years of age or older on the date the application is submitted to the Issuing Authority.

2. The applicant failed to supply all of the information requested on the license application.

3. The applicant gave false, fraudulent, or untruthful information on the license application.

4. The applicant has had a sexually-oriented license revoked from the City or any other jurisdiction within a one (1) year period immediately preceding the date the application was submitted.

5. The applicant has had a conviction of a felony or gross misdemeanor or misdemeanor relating to sex offenses, obscenity offenses, or adult uses in the past five (5) years.

6. The sexually-oriented business does not meet the zoning requirements prescribed in this Ordinance.
7. The premises to be licensed as a sexually-oriented business is currently licensed by the City as a tanning facility, tattoo establishment, pawnshop, therapeutic massage enterprise, or an establishment licensed to sell alcoholic beverages.

8. The applicant has not paid the required licenses and investigation fees.

G. License Restrictions

1. Posting of License. A license issued under this Ordinance must be posted in a conspicuous place in the premises for which it is used.

2. Effect of License. A license issued under this Ordinance is only effective for the compact and contiguous space specified in the approved license application.

3. Maintenance of Order. A licensee under this Ordinance shall be responsible for the conduct of the business being operated and shall not allow any illegal activity to take place on or near the licensed premises including but not limited to prostitution, public indecency, indecent exposure, disorderly conduct, or the sale or use of illegal drugs. Every act or omission by an employee or independent contractor of the licensee constituting a violation of this Ordinance shall be deemed the act or omission of the licensee if such act or omission occurs either with the authorization, knowledge, or approval of the licensee or as a result of the licensee’s negligent failure to supervise the employee’s or independent contractor’s conduct.

4. Distance Requirement for Live Adult Entertainment. All performers, dancers, and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed facility where such entertainment can be seen by patrons of the licensed facility shall remain at all times a minimum distance of ten (10) feet from all patrons, customers, or spectators and shall dance or provide such entertainment on a platform intended for that purpose, which shall be raised at least two (2) feet from the level of the floor on which patrons or spectators are located.

5. Interaction with Patrons. No dancer, performer, or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed facility where the entertainment can be seen by patrons of the licensed facility shall fondle or caress any spectator or patron.
6. Gratuity Prohibition. No customers, spectator, or patron of a licensed facility shall directly pay or give any gratuity to any dancer or performer and no dancer or performer shall solicit any pay or gratuity from any patron or spectator.

7. Adult Car Wash Requirements. Sexually-oriented businesses that are adult car washes shall meet all of the requirements of this Ordinance.

H. Restrictions Regarding License Transfer

1. The license granted under this Ordinance is for the person and the premises named on the approved license application. No transfer of a license shall be permitted from place to place or from person to person without complying with the requirements of an original application.

2. When a sexually-oriented business licensed under this Ordinance is sold or transferred, the existing licensee shall immediately notify the Issuing Authority of the sale or transfer. If the new owner or operator is to continue operating the sexually-oriented business, the new owner or operator must immediately apply for a license under this Ordinance.

I. Restrictions Regarding Hours of Operation

A licensee shall not be open for business to the public during the following hours on the following days:

1. Adult Body Painting Studio, Adult Book Stores, Adult Companionship Establishment, Adult Modeling Studio, Adult Motion Picture Theaters, Adult Mini-Motion Picture Theaters, Adult Sauna, Adult Car Wash: Monday through Sunday – Not open before 6:00 a.m. nor after 11:00 p.m.

2. Adult Entertainment Facilities, including Adult Oriented Cabarets: Monday through Sunday – Not open before 6:00 a.m. nor after 1:00 a.m.

J. Restrictions Regarding Minors

No licensee shall allow minors to enter the licensed premises. The licensee shall request proof of age of all persons the licensee believes to be under the age of eighteen (18) years. Proof of age may be established only by: a valid driver’s license or identification card issued by Minnesota, another State, or a Province of Canada, and including the photograph and date of birth of the licensed person; a valid military identification card issued by the United States Department of Defense, or in the case of a foreign national from a nation other than Canada, a valid passport.

K. Renewal Application
1. Annual Licenses. Deadline of Renewal Applications. All licenses issued under this Division shall be effective for only one (1) year commencing with the date of approval by the Issuing Authority or City Council. An application for the renewal of an existing license shall be submitted to the Issuing Authority at least thirty (30) calendar days prior to the expiration date of the license.

2. Verification, Investigation and Consideration of Renewal Application. Within twenty (20) calendar days of receipt by the Issuing Authority of a fully completed renewal application, the Issuing Authority shall verify any and all of the information requested of the applicant on the renewal application, including the ordering of criminal background checks, and shall conduct any necessary investigation to assure compliance with this Ordinance. No later than ten (10) calendar days after the completion of the renewal application verification and investigation by the Issuing Authority, as prescribed herein, the Issuing Authority shall issue a renewal license unless one (1) or more of the following conditions exist:

   a. The applicant is a minor at the time the application is submitted.

   b. The applicant failed to supply all of the information requested on the renewal application.

   c. The applicant gave false, fraudulent, or untruthful information on the renewal application.

   d. The sexually-oriented business was found in the immediately preceding license year to have violated the license restrictions prescribed in this Ordinance.

   e. The sexually-oriented business does not meet the location requirements prescribed in the Ordinance.

   f. The premises to be licensed as a sexually-oriented business is currently licensed by the City as a tanning facility, tattoo establishment, pawnshop, therapeutic massage enterprise, or an establishment licensed to sell alcoholic beverages.

   g. The applicant has had a conviction of any crime listed in this Division.

   h. The applicant has had a sexually-oriented license revoked within a one (1) year period immediately preceding the date the application was submitted.
3. Notice of Denial. If the Issuing Authority denies a renewal application, the Issuing Authority shall notify the applicant in accordance with this Ordinance and the notice, shall, in addition, state the grounds of the denial.

4. Appeal to City Council or Court of Law. After the denial of a renewal application by the Issuing Authority, the applicant may appeal the determination of the City Council for reconsideration or by immediately challenging the determination in a court of law. If the City denies renewal of a license under this Division, the applicant shall not be issued a license under this Division for one (1) year from the date of the denial. If, subsequent to the denial, the City Council finds that the basis for the denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the denial became final.

L. Sanctions for License Violations

1. Suspension. The City Council may suspend a license issued pursuant to this Ordinance for a violation of:

   a. Fraud, misrepresentation, or false statement contained in a license application or a renewal application.

   b. Fraud, misrepresentation, or false statement made in the course of carrying on the licensed occupation or business.

   c. Any violation of this Ordinance or related State law.

   d. A licensee’s criminal conviction that is directly related to the occupation or business licensed as defined by Minn. Stat. § 368.03, Subd. 2, provided that the licensee cannot show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the licensed occupation or business as defined by Minn. Stat. § 364.03, Subd. 3.

2. Revocation. The City Council make revoke a license if the City Council determines that:

   a. The licensee’s license was suspended in the preceding fourteen (14) months and an additional cause of suspension as detailed in L. 1. above is found by the City Council to have occurred within the fourteen (14) month period.

   b. The licensee gave false or misleading information in the material submitted to the City during the application process.
c. The licensee or an employee or independent contractor of the licensee has knowingly allowed possession, use, or sale of controlled substances on the premises.

d. A licensee or an employee or independent contractor has knowingly allowed prostitution on the premises.

e. A licensee violated any of the provisions of Minn. Stat. §§ 617.241 – 617.299 relating to the illegal distribution, possession or sale of obscene materials.

f. A licensee or an employee knowingly operated the sexually-oriented business during a period of time when the licensee’s license was suspended.

g. A licensee has been convicted of an offense prescribed in Section F and/or G, Section 10.10.03 of this Ordinance for which the time period required has not elapsed.

h. On two or more occasions within a 12 month period, a person or persons has/have committed an offense prescribed in Section F and/or Section G, Section 10.10.03 of this Ordinance, in or on the licensed premises, for which a conviction has been obtained, and the person or persons were employees or independent contractors of the licensee at the time the offenses were committed.

i. A licensee or an employee of independent contract of the licensee has knowingly allowed specified sexual activities to occur in or on the licensed premises.

j. A licensee is delinquent in payment to the City, County, State or Federal Governments for hotel occupancy taxes, ad valorem taxes, sales taxes, or other financial obligations.

3. Notice of Hearing. A revocation or suspension shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least eight (8) days notice of the time and place of the public hearing and shall state the nature of the charges against the licensee. The notice shall be mailed to the licensee by regular and certified mail at the most recent address listed on the application.

Sec. 10.10.04. Penalty.

A violation of this Ordinance shall be a misdemeanor under Minnesota law and each day that a prohibited violation occurs or exists will constitute a separate violation.
Sec. 10.10.05. Severability.

It is the specific intent of the Council that if any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance as adopted. The City Council hereby declares that given the overall purpose and intent of the Ordinance, it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases of the Ordinance are declared invalid.

Sec. 10.10.06. Effective Date.

This Ordinance shall be effective upon its adoption and publication according to law. The date of publication was July 21, 2005.

SECTION 10.11 RIGHT-OF-WAY ORDINANCE

Sec. 10.11.01. Findings, Purpose, and Intent.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the City strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this ordinance relating to right-of-way permits and administration. This ordinance imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to compliment the regulatory roles of State and Federal agencies. Under this ordinance, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this ordinance provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This ordinance shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in Minn. Stat. §§ 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the “Act”) and the other laws governing applicable rights of the City and users of the right-of-way. This ordinance shall also be interpreted consistent with Minnesota Rules 7819.0050 - 7819.9950 where possible. To the extent any provision of this ordinance cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This ordinance shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

Sec. 10.11.02. Election to Manage the Public Rights-of-Way.

Pursuant to the authority granted to the City under State and Federal statutory, administrative and common law, the City hereby elects, pursuant to Minn. Stat. § 237.163, Subd. 2(b), to manage rights-of-way within its jurisdiction.
Sec. 10.11.03. Definitions.

The following definitions apply in this Chapter of this Code. References hereafter to “Sections” are, unless otherwise specified, references to sections in this ordinance. Define terms remain define terms, whether or not capitalized.

“Abandoned Facility” means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

“Applicant” means any person requesting permission to excavate or obstruct a right-of-way.

“City” means the City of Staples, Minnesota. For purposes of Sec. 10.11.23, “City” means its elected officials, officers, employees and agents.

“City Inspector” means any person authorized by the City to carry out inspections related to the provisions of this ordinance.

“Commission” means the State Public Utilities Commission.

“Congested Right-of-Way” means a crowded condition in the sub-surface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities in conformance with Minn. Stat. § 216D.04, Subd. 3, over a continuous length in excess of 500 feet.

“Construction Performance Bond” means any of the following forms of security provided at permittees option:

A. Cash deposit;
B. Security of a form listed or approved under Minn. Stat. § 15.73, Subd. 3;
C. Letter of Credit, in a form acceptable to the City;
D. Self-insurance, in a form acceptable to the City; or
E. A blanket bond for projects within the City, or other form of construction bond, for a time specified and in a form acceptable to the City.

“Department” means the Department of Public Works of the City.

“Emergency” means a condition that (1) imposes a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.
“Equipment” means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

“Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

“Excavation Permit” means the permit which, pursuant to this ordinance, must be obtained before a person may excavate in a right-of-way. An Excavation Permit allows the holder to excavate that part of the right-of-way described in such permit.

“Excavation Permit Fee” means money paid to the City by an applicant to cover management costs.

“Facility” or “Facilities” means any tangible asset in the right-of-way required to provide Utility Service.

“Franchisee” means the grant of rights made by the City to (1) a cable communications system as defined in Minn. Stat. Chapter 238; (2) a public utility as defined in Minn. Stat. §216B.02, Subds. 4, 6; and (3) a cooperative electric association organized under Minn. Stat. Chapter 308A.

“High Density Corridor” means a designated portion of the public right-of-way within which telecommunications providers having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.

“Hole” means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

“Local Representative” means a local person or persons, or designee of such person or persons, authorized by a right-of-way user to accept service and to make decisions for that right-of-way user regarding all matters within the scope of this ordinance.

“Management Costs” means the actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management Costs do not include payment by a telecommunications provider for the use of the right-of-way, the fees and costs of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minn. Stat. §§ 237.162 or 237.163; or any ordinance enacted under those sections, or the City fees and costs related to appeals taken pursuant to Sec. 10.11.25 of this ordinance.
“Pavement” means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel. Improved surface shall mean to include concrete curb and gutter, sidewalks, driveways, curb returns at entrances and pedestrian curb ramps.

“Permit” has the meaning given “right-of-way permit” in Minn. Stat. § 237.162.

“Permittee” means any person to whom a permit to excavate a right-of-way has been granted by the City under this ordinance.

“Plumber” means any person duly licensed by the City. For the purposes of this ordinance, the “plumber” is the “right-of-way user” for water and sewer service, including service laterals.

“Public Right-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

“Restore” or “Restoration” means the process by which an excavated right-of-way is returned to the same condition and pavement life expectancy that existed before excavation. This includes the replacement of boulevard trees with 1 - 1 ½” trees in the surrounding area and the placement of black dirt and grass seed or sod in the excavated boulevard area.

“Restoration Cost” means the amount of money paid to the City by a permittee to return to the same condition and pavement life expectancy that existed before excavation and if applicable, boulevard tree replacement and boulevard restoration.

“Right-of-Way Permit” means the excavation permit required by this ordinance.

“Right-of-Way User” means (1) a telecommunications right-of-way user as defined by Minn. Stat. § 237.162, Subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way; or (3) a person performing concrete work, to include concrete curb and gutter, sidewalks, driveways, curb returns at entrances and pedestrian curb ramps.

“Service” or “Utility Service” includes (1) those services provided by a public utility as defined in Minn. Stat. § 216B.02, Subds. 4, 6; (2) services of a telecommunications provider, including transporting of voice or data information; (3) services of cable communications systems as defined in Minn. Stat. Chapter 238; (4) natural gas or electric energy or telecommunications services provided by the City; (5) services provided by a cooperative electric association organized under Minn. Stat. Chapter 308A; and (6) water, and sewer, including service laterals, steam, cooling or heating services.
“Service Lateral” means an underground facility that is used to transmit, distribute, or furnish gas, electricity, communications, or water from a common source to an end-use customer. A Service Lateral is also an underground facility that is used in the removal of waste water from a customer’s premises.

“Trench” means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

“Telecommunication Provider” means a person owning or controlling a facility in the right-of-way, or seeking to own or control a Facility in the right-of-way that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system is defined and regulated under Minn. Stat. Chapter 238, and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minn. Stat. §216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chapters 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chapter 308A, are not telecommunications right-of-way users for purposes of this ordinance.

**Sec. 10.11.04. Administration.**

The City Administrator is the principle City official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The City Administrator may delegate any or all of the duties hereunder.

**Sec. 10.11.05 Permit Requirement.**

**Subd. a. Permit Required.**

No person may excavate any right-of-way without first having obtained the appropriate right-of-way permit from the City to do so.

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

2. **Exception.** Right-of-way users who join in a scheduled excavation performed by the City are not required to pay the excavation permit fee but a permit would still be required.

**Subd. b. Permit Display.**

Permits issued under this ordinance shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the City.
Sec. 10.11.06 Permit Applications.

Application for a permit is made to the City. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:

(a) Submission of a completed permit application form, including all required attachments and scaled drawings in accordance with Minnesota Rules 7819.4100, Subpart 2, showing the location and area of the proposed project and the location of all known existing and proposed facilities.

(b) Insurance as specified by Sec. 10.11.11, Subd. b.

(c) Payment of money due the City for:

(1) Permit fees;

(2) Prior past due restoration costs;

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

(4) Franchise fees or other charges, if applicable.

(d) When an Excavation Permit is requested for purposes of installing facilities, the City may require the posting of a construction performance bond in an amount prescribed by City. A construction performance bond is not required for a plumber or a person performing concrete work affecting a single parcel of property, to replace or repair a concrete curb, gutter, sidewalk, driveway, curb return or pedestrian curb ramp.

Sec. 10.11.07 Issuance of Permit; Conditions.

Subd. a. Permit Issuance.

If the applicant has satisfied the requirements of this ordinance, the City shall issue a permit.

Subd. b. Conditions.

The applicant shall provide the necessary flags, barricades, cribbing and flares and erect them in a manner to protect traffic and persons at all times. In addition, the City may impose other reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the
help, safety and welfare or when necessary to protect the right-of-way and its current use.

Sec. 10.11.08 Permit Fees.

Subd. a. Excavation Permit Fee.

The City shall establish an excavation permit fee in an amount sufficient to recover management costs in accordance with Minnesota Rules 7819.1000.

Subd. b. Payment of Permit Fee.

No excavation permit shall be issued without payment of excavation permit fee or City receiving an acceptable purchase order.

Subd. c. Non-refundable.

Permit fee that was paid for a permit that the City has revoked for a breach as stated in Sec. 10.11.17 is not refundable.

Subd. d. Application to Franchises.

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

Sec. 10.11.09 Right-of-Way Restoration.

Subd. a. Restoration.

Following the work to be done under the excavation permit, the City shall restore the right-of-way, except the permittee shall complete boulevard and concrete restoration work. The permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittees improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with correcting the defective work.

If permittee fails to pay as required, the City may exercise its rights under the Construction Performance Bond. If, within twenty-four (24) months, or such shorter time period as City may determine, after completion of the Restoration of the Right-of-Way, the City determines that the Right-of-Way has been properly restored, the surety on the construction performance bond shall be released.

Subd. b. Standards.
Permittee will remove from the excavation site the excavated bituminous and concrete. Permittee shall backfill with the same material excavated in the same order as removed in six inch (6”) layers with the material to be thoroughly tamped by hand or mechanical method.

Sec. 10.11.10 Supplementary Applications.

Subd. a. Limitation on Area.

A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee that determines that an area greater than that specified in the permit must be excavated before working in that greater area must (i) revise the original application to include the greater area and pay any additional fees required thereby, and (ii) be granted a revised permit to include the greater area.

Subd. b. Limitation on Dates.

A right-of-way permit is valid only for the dates specified in the permit, not to exceed thirty (30) days, unless otherwise agreed to by the City. Permittee shall not begin its work before the permit start date and shall finish the work by the permit end date. If a permittee does not finish the work by the permit end date, the permittee shall revise the original application to include the additional time it needs, if agreed to by the City, and pay any additional fees required thereby, and be granted a revised permit to include the additional time.

Sec. 10.11.11 Other Obligations.

Subd. a. Compliance with Other Laws.

Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the City or other applicable rule, law, or regulation. A permittee shall comply with all requirements of local, State and Federal laws, including but not limited to Minn. Stat. §§ 216D.01 - 216D.09 (Gopher State One Call Excavation Notice System) and Minnesota Rules Chapter 7560. A permittee shall perform all work in conformance with all applicable codes and establish rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

Subd. b. Insurance.
The information provided to the City at the time of registration shall include but not be limited to:

A. A certificate of insurance or self-insurance acceptable by the City:

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

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

   (3) Naming the City as an additional insured as to whom the coverages required herein are enforced and applicable and for whom defense will be provided as to all such coverages;

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

   (5) Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this section.

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

C. A permittee shall keep all of the information listed above current at all times by providing to the City information as to changes within fifteen (15) days following the date on which the permittee has knowledge of any change.

D. A person replacing a sidewalk or driveway apron is not required to provide the insurance listed above.

Subd. c. Prohibited Work.

Except in an emergency, and with the approval of the City, no right-of-way excavation may be done prior to April 1 and after September 15 of each calendar year.

A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with City parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Subd. e. Trenchless Excavation.

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

Sec. 10.11.12 Denial of Permit.

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

Sec. 10.11.13 Installation Requirements.

All work performed in the right-of-way shall be done in conformance with Minnesota Rules 7819.5000 and other applicable local requirements, in so far as they are not inconsistent with Minn. Stat. §§ 237.162 and 237.163. Installation of service laterals shall be performed in accordance with Minnesota Rules Chapter 7560 and this ordinance. Service lateral installation is further subject to those requirements and conditions set forth by the City in the applicable permits and/or agreements referenced in Sec. 10.11.18, Subd. 2 of this ordinance.

Sec. 10.11.14 Inspection.

Subd. a. Notice of Completion.

When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate within ten (10) days unless otherwise agreed to by the City.

Subd. b. Site Inspection.
Permittee shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times during the excavation of and upon completion of the work.

Subd. c.  Authority of City Inspector.

(a) At the time of inspection, the City Inspector may order the immediate cessation of any work that poses a serious threat to the life, health, safety or well-being of the public.

(b) The City Inspector may issue an order to the permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the City that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit pursuant to Sec. 10.11.17.

Sec. 10.11.15  Work Done Without a Permit.

Subd. a.  Emergency Situations.

Each right-of-way user shall immediately notify the City of any event regarding its facilities that it considers to be an emergency. The right-of-way user may proceed to take whatever actions are necessary to respond to the emergency. Excavators notification to Gopher State One Call regarding an emergency situation does not fulfill this requirement. Within two (2) business days after the occurrence of the emergency, the right-of-way user shall apply for the necessary permits, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this ordinance for the actions that it took in response to the emergency.

If the City becomes aware of an emergency regarding a right-of-way user’s facilities, the City will attempt to contact the local representative of each right-of-way user affected, or potentially affected, by the emergency. In any event, the City may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the right-of-way user whose facilities occasioned the emergency.

Subd. b.  Non-Emergency Situations.

Except in an emergency, any person who, without first having obtained the necessary permit, excavates a right-of-way must subsequently obtain a permit and, as a penalty, pay double the normal fee for said permit.
Sec. 10.11.16 Supplementary Notification.

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

Sec. 10.11.17 Revocation of Permits.

Subd. a. Substantial Breach.

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

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

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

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

(d) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee’s control; or

(e) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Sec. 10.11.14.

Subd. b. Written Notice of Breach.

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

Subd. c. Response to Notice of Breach.

Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the City with a plan that is acceptable to the City
curing the breach. Permittee’s failure to contact the City, or permittee’s failure to timely submit an acceptable plan, or permittee’s failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.

Subd. d. Reimbursement of City Costs.

If a permit is revoked, the permittee shall also reimburse the City for the City’s reasonable costs, including patching and restoration costs and the costs of collection and reasonable attorneys fees incurred in connection with such revocation.

Sec. 10.11.18 Mapping Data.

Subd. a. Information Required.

Applicant shall provide mapping information required by the City in accordance with Minnesota Rules 7819.4100. Failure to provide maps and drawings shall be grounds for denial of a permit.

Subd. b. Service Laterals.

Permits issued for the installation or repair of service laterals, other than minor repairs as defined in Minnesota Rules 7560.0150, Subpart 2, shall require the plumbers use of appropriate means of establishing the horizontal and vertical locations of installed service laterals. Within ten (10) days following completion of water and sewer lateral work, the plumber shall provide the City accurate maps and drawings certifying the “as built” location of facilities installed by the plumber. Such maps and drawings shall include the horizontal and vertical location of all facilities and equipment and shall be provided consistent with the City’s electronic mapping system when practical. Compliance with this Subd. b and with applicable Gopher State One Call law and Minnesota Rules governing service laterals installed after December 31, 2005, shall be a condition of any City approval necessary for (1) payments to contractors working on a public improvement project including those under Minn. Stat. Chapter 429, and (2) City approval of performance under development agreements, or other subdivision or site plan approval under Minn. Stat. Chapter 462. The City shall reasonably determine the appropriate method of providing such information to the City. Failure to provide prompt and accurate information on the service laterals installed may result in the revocation of the permit issued for the work or for future permits to the plumber.

Sec. 10.11.19. Location and Relocation of Facilities.
**Subd. a.** Placement, location, and relocation of facilities must comply with the Act, with other applicable law, and with Minnesota Rules 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.

**Subd. b. Corridors.**

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

Any right-of-way user who has facilities in the right-of-way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the City for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the right-of-way user.

**Subd. c. Limitation of Space.**

To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the City shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the right-of-way but shall be guided primarily by considerations of the public interest, the public’s needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects that have been determined to be in the public interest.

**Sec. 10.11.20 Pre-excavation Facilities Location.**

In addition to complying with the requirements of Minn. Stat. §§ 216D.01 – 216D.09 (“One Call Excavation Notice System”) before the start date of any right-of-way excavation, franchisees that have facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Franchisees whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.
Sec. 10.11.21 Damage to Other Facilities.

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

Sec. 10.11.22. Right-of-Way Vacation.

Reservation of Right. If the City vacates a right-of-way that contains the facilities of a right-of-way user, the right-of-way user’s rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

Sec. 10.11.23. Indemnification and Liability.

Subd. a. Claims Indemnified.

By accepting a permit under this ordinance, a right-of-way user or permittee agrees to the following:

1. Indemnification of the City against liability when a permit authorizes a permittee to obstruct or excavate on or within a public right-of-way to install, maintain, or repair the permittee’s facilities.

2. The permittee shall defend, indemnify, and hold harmless the City from all liability or claims of liability for bodily injury or death to persons, or for property damage, in which the claim:

   (a) Alleges a negligent or otherwise wrongful act or omission of the permittee or its employee, agent, or independent contractor in installing, maintaining, or repairing the permittee’s facilities; and alleges that the City is liable, without alleging any independent negligent, or otherwise wrongful act or omission on the part of the City; or

   (b) Is based on the City’s negligent or otherwise wrongful act or omission in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition or purpose of the permit granted to the permittee.

Subd. b. Claims Not Indemnified.
A permittee is not required to indemnify the City for losses or claims occasioned by the negligent or otherwise wrongful act or omission of the City except;

1. Regarding the issuance of a permit or the inspection or enforcement of compliance with the permit; or

2. When otherwise provided in an applicable franchise agreement.

Subd. c. Remedy is Additional; Subrogation.

A defense or indemnification of the City by a permittee is deemed not to be a waiver of any defense or immunity otherwise available to the City. A permittee, in defending any action on behalf of the City is entitled to assert every defense or immunity that the City could assert on its own behalf.

Sec. 10.11.24 Abandoned and Unusable Facilities.

Subd. a. Discontinued Operations. A right-of-way user who has determined to discontinue all or a portion of its operations in the City must provide information satisfactory to the City that the right-of-way user’s obligations for its facilities in the right-of-way under this ordinance have been lawfully assumed by another right-of-way user.

Subd. b. Removal. Any right-of-way user who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the City.

Sec. 10.11.25 Appeal.

A right-of-way user that: (1) has been denied a permit; (2) has had a permit revoked; (3) believes that the fees imposed are not in conformity with Minn. Stat. §237.163, Subd. 6; or (4) disputes a determination of the City Administrator, or designee, regarding Section 1.18, Subd. 2, of this ordinance may have the denial, revocation, fee imposition, or decision reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right-of-way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by a written findings establishing the reasonableness of the decision.

Sec. 10.11.26. Severability.

If any portion of this ordinance is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this
ordinance precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.
CHAPTER 11 - FRANCHISES

SECTION 11.1  GENERAL TERMS.

Sec. 11.1.01  Reference to the Staples City Charter

See the Staples City Charter (Appendix A) for general provisions regarding franchises.

Sec. 11.1.02  City Ownership Restriction

The City shall not construct, purchase, or otherwise acquire, own or operate a cable communications system unless the Ordinance or Resolution of the City Council authorizing the City’s construction, purchase or other acquisition, ownership or operation of the cable communications system has been approved by a majority of those voting on the Ordinance or Resolution at a regular or special election conducted not more than 120 days after the adoption of the Ordinance or Resolution and prior to its effective date. For purposes of this Section, “cable communications system” means a system that operates the service of receiving and amplifying programs broadcast by one or more television or radio stations and other programs originated by a cable communications company or by another party, and distributing those programs by wire, cable, microwave or other means, whether the means are owned or leased, to persons who subscribe to the service.

SECTION 11.2  SPECIFIC FRANCHISES.

Sec. 11.2.01.  Cable TV.
CABLE TELEVISION FRANCHISE ORDINANCE

FOR THE

CITY OF STAPLES, MINNESOTA

AND

TEKSTAR CABLEVISION, INC.,

D/B/A ARVIG COMMUNICATION SYSTEMS

MAY 10, 2005
STATEMENT OF INTENT AND PURPOSE.

City intends, by the adoption of this Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents.

FINDINGS.

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee’s technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

2. Grantee’s plans for constructing, upgrading, and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;

3. The Franchise granted to Grantee by City complies with the existing applicable State statutes, Federal laws and regulations; and

4. The Franchise granted to Grantee is nonexclusive.

SECTION 1 SHORT TITLE AND DEFINITIONS.

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance.

2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

a. “Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order,
directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

b. “Basic Cable Service” means any Service tier, which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7).

c. “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(6).

d. “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

i. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

ii. A facility that serves Subscribers without using any public Right-of-Way;

iii. A facility of common carrier that is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

iv. An open video system that complies with 47 U.S.C. § 573; or

v. Any facilities of any electric utility used solely for operating its electric utility systems.

e. “Channel” or “Cable Channel” means 6 MHz of the electromagnetic frequency spectrum that is used in a Cable System and that is capable of delivering an analog television Channel as defined by the FCC.

f. “City” means City of Staples, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.
g. “City Council” means the governing body of the City of Staples, Minnesota.

h. “Converter” means an electronic device that converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.

i. “Drop” means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.

j. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

k. “Franchise” or “Cable Franchise” means this franchise ordinance and the regulatory and contractual relationship established hereby.

l. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or cable Subscribers); capital costs that are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.

m. “Grantee” is Tekstar Cablevision, Inc., d/b/a/ Arvig Communication Systems, its lawful successors, transferees or assignees.

n. “Gross Revenue” means any and all revenue derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent, or any entity in which Grantee has a financial interest from the provision of Cable Services in the City.

o. “Installation” means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom installations with the Subscriber Converter or other terminal equipment.

p. “Lockout Device” means an optional mechanical or electrical accessory to a Subscriber’s terminal that inhibits the viewing of a certain program, certain Channel, or certain Channels provided by way of the Cable System.

q. “Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers.
r. “Normal Operating Conditions” means those Service conditions that are within the control of Grantee. Those conditions that are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

s. “Other Programming Service” means information that a cable operator makes available to all Subscribers generally.

t. “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Other Programming Services.

u. “PEG” means public, educational and governmental.

v. “Person” is any Person, firm, partnership, association, corporation, company, limited liability entity or other legal entity.

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

x. “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

y. “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.

z. “Standard Installation” means any residential or commercial Installation that can be completed using a Drop of one hundred fifty (150) feet or less.

aa. “Subscriber” means any Person who lawfully receives Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant not the building owner. If a bulk-billed account consists of twenty (20) apartments, and the monthly billing is Four hundred fifty and No/100 Dollars ($450.00), and the published basic/expanded basic residential rate is Forty-five and No/100 Dollars (45.00), then the number of equivalent billing units (“EBUs”) for the account is ten (10) EBUs. In all cases, Grantee’s calculation of (“EBUs”) shall be consistent with how Grantee reports EBUs to commercial programmers.
bb. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2 GRANT OF AUTHORITY AND GENERAL PROVISIONS.

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the obligations and comply with all provisions herein, shall be deemed a violation of this Franchise.

2. Grant of Nonexclusive Authority

   a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.

   b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of Way.

   c. This Franchise shall be nonexclusive, and City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service.

3. Lease or Assignment Prohibited. No person may lease Grantee’s System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.5 of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.

4. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of execution by City, unless sooner renewed, revoked or terminated as herein provided.

5. Favored Nations. In the event the City enters into a franchise with any other cable operator other than the Grantee to enter into the City’s Rights-of-Way for the purpose of constructing and operating a Cable System or providing Cable Service to any part
of the Service Area, the material provisions thereof shall be on terms and conditions no more favorable or less burdensome than those in this Franchise pertaining to: 1) the area served; 2) public, educational or governmental access requirements; or 3) franchise fees. Nothing in this Section 2.5 shall prevent the City from imposing additional terms and conditions on any other cable operator to which it may grant a franchise.

6. Compliance with Applicable Laws, Resolutions, and Ordinances.

   a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority, and eminent domain rights of City. This Franchise may also be modified or amended with the written consent of City and Grantee as provided in Section 12.3 herein.

   b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability that addresses usage of the Rights-of-Way within City, which may have the effect of superseding, modifying or amending the terms herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way that exceed burdens on similarly situated Rights-of-Way users so long as the Grantee is given advance notice of pending changes and is afforded the opportunity to participate in such ordinance and regulation change prior to enactment.

   c. In the event of any conflict between this Franchise and any City ordinance or regulation that addresses usage of the Rights-of-Way, the conflicting terms of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way that exceed burdens on similarly situated Rights-of-Way users so long as Grantee is given advance notice of pending changes and is afforded the opportunity to participate in such ordinance and regulation change prior to enactment.

   d. In the event any City ordinance or regulation that addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in this Franchise, Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way that exceed burdens on similarly situated Rights-of-Way users.
e. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee’s proposed interpretation, to City, in accordance with Section 2.9. City shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.

7. **Rules of Grantee.** Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.

8. **Territorial Area Involved.** This Franchise is granted for the corporate boundaries of City, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential cable Subscribers because of the income of the potential cable Subscribers or the area in which such group resides.

9. **Written Notice.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City’s administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

   **If to City:**
   
   City Administrator  
   122 6th Street Northeast  
   Staples, MN  56479

   **If to Grantee:**
   
   Arvig Communication Systems  
   Attention: Director of Video  
   150 Second Street Southwest  
   Perham, MN  56573

   Such addresses may be changed by either party upon notice to the other party given as provided in this section.

10. **Ownership of Grantee.** Grantee represents and warrants to City that the names of the shareholders, partners, members or other equity owners of the Grantee and any of the shareholders, partners, members and or other equity owners of Grantee are as set forth in Exhibit A hereto.
SECTION 3 CONSTRUCTION STANDARDS.

1. Registration, Permits, Construction Codes and Cooperation.

   a. Grantee shall comply with the construction requirements of local, State and Federal laws.

   b. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with Federal or State laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.

   c. Reimbursement paid through the permitting process is separate and in addition to any other fees included in the Franchise. Grantee, at the time of or prior to submitting construction plans, shall provide City with a description of the type of Service to be provided by the Grantee in sufficient detail for City to determine compliance with the Franchise and Applicable Laws.

   d. City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with the procedures established by the City Administrator or his or her designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.

   e. Grantee shall first obtain the written approval of City prior to commencing any construction or reconstruction on the Rights-of-Way and public places of City.

   f. Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Laws or this Franchise.

   g. Grantee shall meet with developers and be present at pre-construction meetings to ensure that the newly constructed Cable System facilities are installed in new developments within City in a timely manner.

   h. On or about thirty (30) days prior to activation of the Cable System, affected Subscribers will receive a letter notifying them of same, which letter shall include Grantee’s telephone number that Subscribers can use to contact Grantee with any questions or concerns they may have. No less than forty-eight (48) hours before construction, all affected houses will receive written notification regarding Grantee’s construction schedule, which will also include Grantee’s telephone
number. Nothing shall prohibit Grantee from consolidating the notices required in this subparagraph.

i. Grantee shall hold an annual meeting with City to coordinate construction plans of both parties for the upcoming year.

2. **Ongoing Construction.** Grantee shall notify City at least ten (10) days prior to the commencement of any construction in any Rights-of-Way. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

3. **Use of Existing Poles or Conduits.**

   a. Grantee shall utilize existing and or replacement poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures shall be modified by Grantee at its own expense whenever City determines that the public convenience would be enhanced thereby.

   b. The facilities of Grantee shall be installed underground in those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost. If City requires utilities to bury lines that are currently overhead, and the City financially participates in said undergrounding, then the City will consider providing the same cost sharing to the Grantee.

4. **Minimum Interference.**

   a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee’s work in the Rights-of-Way.

   b. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.
c. Grantee shall provide advance notice to any private property owner and shall obtain authorization prior to commencing work on private property.

5. **Disturbance or Damage.** Any and all Rights-of-Way, or public property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee’s work, as determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into condition as good as that prevailing prior to Grantee’s work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City’s invoice thereof.

6. **Temporary Relocation**

   a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary or less expensive for City.

   b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than five (5) days advance notice to arrange such temporary wire alterations.

7. **Emergency.** Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Administrator, police chief, fire chief, or their delegates, to remove or damage any of Grantee’s facilities, no charge shall be made by Grantee against City for restoration, repair or damages.

8. **Tree Trimming.** Grantee shall not trim any trees or other foliage located on private property prior to obtaining the written consent of the owner of said property. Any trimming of trees or other foliage by the Grantee in the Rights-of-Way shall not occur prior to obtaining the written consent of the City. Such trees or other foliage shall be trimmed at Grantee’s own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by City.
9. **Protection of Facilities.** Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee’s facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system. Any such activity shall be performed only after full compliance with any advance notice requirements pursuant to State statute as well as Gopher State One Call for the purpose of locating any existing underground facility of the Grantee.

10. **Installation Records.** Each Grantee shall keep accurate Installation records of the location of all facilities in the Rights-of-Way and public ways and furnish them to City upon request. Grantee shall cooperate with City to furnish such information in an electronic mapping format, if possible compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, Grantee shall provide City with Installation records in an electronic format, if possible compatible with the then-current City electronic mapping format showing the location of the underground and above ground facilities. Such electronic formatting will be available in the format currently used by the Grantee or future formats as may become used by the Grantee.

11. **Locating Facilities.**

   a. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days. Any such activity shall be performed only after full compliance with any required advance notice pursuant to State statute as well as Gopher State One Call for the purpose of locating any existing underground facility of the Grantee.

   b. City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.

12. **City’s Rights.**

   a. When City uses its prior superior right to the Rights-of-Way and public ways, Grantee shall move its property that is located in the Rights-of-Way and public ways, at its own cost, to such a location as City and the Grantee mutually agree.
b. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, or repairing any sidewalk or other public work.

13. Facilities in Conflict. If, during the course of a project, City determines Grantee’s facilities are in conflict, the following shall apply:

a. Prior to City Notice to Proceed to Contractor: Grantee shall, within a reasonable time, but in no event exceeding three (3) months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by Grantee of written notice from City. However, if both City and Grantee agree, the time frame may be extended based on the requirements of the project.

b. Subsequent to City Notice to Proceed to Contractor: City and Grantee will immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation is to begin no later than fourteen (14) days, if practicable, after written notification from City of the conflict.


a. Subject to Grantee’s compliance with Section 3.13 above, if Grantee’s relocation effort so delays construction of a public project causing City to be liable for delay damages, Grantee shall reimburse City for those damages attributable to the delay created by Grantee. In the event Grantee should dispute the amount of damages attributable to Grantee, the matter shall be referred to the City engineer for a decision. In the event that Grantee disagrees with the City engineer’s decision, the matter shall be submitted to the City Administrator or the City Administrator’s designee for determination, whose decision shall be final and binding upon Grantee as a matter of City review, but nothing herein waives any right of appeal to the courts.

b. In the event City becomes aware of a potential delay involving Grantee’s facilities, City shall promptly notify Grantee of this potential delay.

15. Interference with City Facilities. The Installation, use and maintenance of the Grantee’s facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with City’s placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by City.

16. Interference with Utility Facilities. Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the Rights-of-Way and public ways of City and agrees to relocate its facilities, if necessary, to accommodate another facility.
relocation. Nothing in this section is meant to limit any rights Grantee may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.

17. **Collocation.** To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to collocate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.

18. **Safety Requirements.**

   a. Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage or injuries.

   b. Grantee shall install and maintain its System and other equipment in accordance with City’s codes and the requirements of the National Electric Safety Code and all other applicable FCC, State and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

   c. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

**SECTION 4   DESIGN PROVISIONS.**

1. **System Construction: Minimum Channel Capacity.**

   a. Grantee shall develop, construct, operate and maintain for the term of this Franchise a System providing a minimum of 110 or more Channels of Video Programming.

   b. Grantee shall develop, construct and operate a System capable of providing non-video services such as high-speed data transmission, internet access, and Other Programming Services.

   c. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments, and further subject to Grantee’s signal carriage obligations hereunder and pursuant to 47 U.S.C. §531.536, and further subject to City’s rights pursuant to 47 U.S.C. §
2. **System Activation.** Grantee shall activate and make available Cable Services in the City on or before September 1, 2005.

3. ** Interruption of Service.** Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System.

4. **Emergency Alert Capability.** Grantee shall at all times comply with applicable State and Federal Emergency Alert System standards pursuant to Title 47, Section 11, Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time.

5. **Technical Standards.** The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

6. **Special Testing.**

   a. City shall have the right to inspect and test all construction or Installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System as desired at any time during the term of this Franchise. Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance or for routine verification of Grantee’s compliance with FCC technical standards. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.

   b. Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations that may be the focus of concern. If, after such meetings and inspections, City wishes to require special tests and the thirty (30) days have elapsed, the tests shall be conducted by Grantee at Grantee’s expense and may be observed by a qualified engineer selected by City. Grantee shall participate and cooperate in such testing and shall not assess City or Subscribers any additional fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing. If such special testing establishes that the System meets all required FCC technical standards set forth at Section 4.5, the City shall bear the expense for such special testing. If such special testing establishes that the System does not
meet all required FCC technical standards set forth at Section 4.5, Grantee shall bear the expense for such special testing.

7. **FCC Reports.** The results of any tests required to be filed by Grantee with the FCC shall upon request of City also be filed with City or its designee within ten (10) days of the conduct of such tests.

8. **Interconnection.** At the request of the City, Grantee shall interconnect with adjacent Cable Systems to facilitate the two-way distribution of PEG Access Channels. All decisions regarding whether to interconnect and the terms and conditions of any such interconnect shall be a matter of agreement between the cable operators involved. All non-recurring and recurring expense incurred by the Grantee to accommodate such request shall be provided to City upfront and thereafter reimbursed by City.

9. **Annexation.** Upon the annexation of any additional land area by the City, if the annexed area is not currently served by a cable operator it will be subject to the other provisions of this Section 4. If the annexed area is served by a cable operator, Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) days of written notification by the City to Grantee. A cable operator other than Grantee whose Cable System already passes homes in an annexed area shall not extend its Cable System beyond those homes that it passes at the time the annexation occurs unless it otherwise obtains a franchise from the City.

10. **Line Extension.**

   a. Grantee shall construct and operate its Cable System so as to provide Service to all parts of its Franchise area as provided in this Franchise and having a density equivalent of seven (7) residential units per one-quarter (1/4) cable mile of System, as measured from the nearest tap on the Cable System.

   b. Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.

   c. Any residential and/or commercial unit located within one hundred fifty (150) feet of the nearest tap on Grantee’s System shall be connected to the System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred fifty (150) foot limit, extend Service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs.
11. **Nonvoice Return Capability.** Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.

12. **Lockout Device.** Upon the request of a Subscriber, Grantee shall make available by sale or lease a Lockout Device allowing Channels on the System to be blocked.

**SECTION 5 SERVICE PROVISIONS**

1. **Regulation of Service Rates.** City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the City chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The City shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. City reserves the right to regulate rates for any future Services to the extent permitted by law.

2. **Non-Standard Installations.** Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard Installation.

3. **Sales Procedures.** Grantee shall not exercise deceptive sales procedures when marketing any of its Services within City. In its initial communication or contact with a non-subscriber or current Subscriber seeking alternative options, Grantee shall inform the non-Subscriber of all levels of Service available, including the lowest priced Basic Cable Service tier and free Service tiers. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

4. **Consumer Protection and Service Standards.** The Grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of this Franchise, that impose higher or additional customer service standards on a cable operator, and shall not contest any decision by the City to enforce the standards set forth herein or such other standards in accordance with Applicable Laws.

   a. **Cable System office hours and telephone availability:**

      i. Grantee will maintain a local, toll-free or collect call telephone access line, which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
1. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

2. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

ii. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

iii. Grantee shall not be required to acquire equipment and/or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

iv. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

b. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.

i. Standard Installations will be performed within seven (7) business days after an order has been placed. “Standard” Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

ii. Excluding conditions beyond the control of Grantee, Grantee will begin working on “Service Interruptions” promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.

iii. The “appointment window” alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

iv. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
v. If Grantee’s representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time that is convenient for the customer.

c. Communications between Grantee and Subscribers:

i. Notifications to Subscribers:

(1) Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

a. Products and Services offered;

b. Prices and options for programming Services and conditions of subscription to programming and other Services;

c. Installation and Service maintenance policies;

d. Instructions on how to use the Cable Service;

e. Channel positions of the programming carried on the System; and

f. Billing and complaint procedures, including the address and telephone number of the City.

(2) Subscribers will be notified of any changes in rates, programming Services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 5.4(c)(i)(1). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any Federal agency, State or City on the transaction between the operator and the Subscriber.

(3) All programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments directed to each Subscriber individually through mailed notice or as an insert or addendum to the Subscriber’s monthly bill, and further subject to Grantee’s signal carriage obligations hereunder and
pursuant to 47 U.S.C. § 531-536, and further subject to City’s rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6 and Exhibit B.

ii. Billing:

(1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

iii. Credits: Credits for Service will be issued no later than the Subscriber’s next billing cycle following the determination that a credit is warranted.

Grantee shall, upon written request from City, provide City with a compliance report specific to the System in the Service Area, which report shall, at a minimum, describe in detail Grantee’s compliance with the terms and provisions of this section.

5. Subscriber Contracts. Grantee shall file with City any standard form residential Subscriber contract to the extent utilized by Grantee. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee’s current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

6. Refund Policy.

a. If a Grantee’s Cable Service is interrupted or discontinued for twenty-four (24) or more consecutive hours, its Subscribers must be credited pro rate for such interruption. Credits must be issued no later than the Subscriber’s next billing cycle following the determination that a credit is warranted. For this purpose, every month will be assumed to have thirty (30) days.

b. In the event a Subscriber establishes or terminates Service and receives less than one (1) full month of Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be processed promptly, upon the return of the equipment supplied by the Grantee if Cable Service is terminated.

7. Late Fees. For purposes of this section any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber for late payment of a bill is a late fee and shall be subject to the following provisions:
a. No such fee may be imposed until twenty (20) days have passed from the date a Subscriber bill is sent and the payment amount due has not been paid on such bill.

b. No fee beyond that permitted by subparagraph (a) of this section may be imposed until forty-five (45) days have passed from the date a Subscriber bill is sent and the payment amount due has not been paid on such bill.

c. Nothing in this section shall be deemed to create, limit, or otherwise affect the ability of Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this section, for the Grantee’s other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

d. The Grantee’s late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this section, shall apply equally in all parts of the Franchise Area, without regard to the neighborhood or income level of the Subscriber.

8. **Local Office Policy.**

a. Grantee shall, at its sole discretion, maintain a location in City for receiving Subscriber inquiries, bill payments, and equipment transfers. The location must be staffed by a Person capable of receiving inquiries and bill payments and the location shall be open hours that are at the sole discretion of the Grantee that are economic and business logical. If there is no local business office located in the City, equipment exchanges requiring a truck roll shall be at no charge to the Subscriber or City. In addition, Grantee shall, at its sole discretion, maintain a drop box within the Service Area for receiving Subscriber payments after hours.

b. Payments at Grantee’s drop box location shall be deemed received on the date such payments are picked up by Grantee if deposited by no later than 12 Noon of that day. Payments deposited later than 12 Noon shall be considered to be received in the following business day’s processing.

**SECTION 6   ACCESS CHANNEL(S) PROVISIONS**

1. **Grantee Support for PEG Access.** Grantee shall provide the following support for PEG access usage within the Service Area:

a. Provision of the Channels designated in Exhibit B of this Agreement for local PEG programming and access use at no charge in accordance with the requirements of Exhibit B.

b. Support of PEG programming to the extent specified in Exhibit B of this Agreement.
c. Provision of free public building Installation and Cable Service as more clearly specified in Exhibit B.

2. **Compliance with Federal Law.** Grantee and City agree that the PEG access support fee referenced in Exhibit B will not be deemed to be “Franchise Fees” within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such obligations shall not be deemed to be (i) “payments in kind” or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 7 hereof or (ii) part of the Franchise Fees to be paid to City by Grantee pursuant to Section 7 hereof.

**SECTION 7  OPERATION AND ADMINISTRATION PROVISIONS**

1. **Administration of Franchise.** The City Administrator or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee’s operation under the Franchise; provided, however, that the City Council shall retain the sole authority to take enforcement action pursuant to this Franchise.

2. **Franchise Fee.**

   a. During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by Federal statute.

   b. Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Grantee’s fiscal quarters together with a report showing the basis for the computation in form and substance substantially the same as Exhibit D attached hereto. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the maximum rate permitted under State law, or twelve percent (12%) if no such rate is legally specified.

   c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Grantee’s books and records pursuant to Section 7.6 of this Franchise and discover that Grantee has failed to fully remit all required Franchise Fees to the City, Grantee shall bear all of the City’s costs and expenses associated with such review.

3. **Discounted Rates.**

   a. If Grantee’s Subscribers are offered what is, in effect, a discount for “bundled” services (i.e. Subscribers obtain Cable Services and some other, non-cable goods
or service) then for the purpose of calculating Gross Revenues, the discount shall be applied proportionately to cable and non-cable goods and services.

b. Consistent with Section 7.3(a) above, in no event shall Grantee be permitted to evade or reduce applicable Franchise Fee payments.

4. **Not Franchise Fees.**

   a. Grantee acknowledges and agrees that the Franchisee Fees payable by Grantee to City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise.

   b. Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchisee Fees or other payments or contributions to be made by Grantee to City pursuant to this Franchise shall be deducted from or credited or offset against any taxes, fees or assessments or general applicability levied or imposed by City or any other governmental authority.

   c. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments or general applicability levied or imposed by any other governmental authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made pursuant by Grantee to City to this Franchisee that shall be deemed to be separate and distinct obligations of Grantee.

5. **Access to Records.** The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee that relate to System operations including specifically Grantee’s accounting and financial records. City acknowledges that some of the records that may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Grantee which are not required to be made public pursuant to Applicable Laws. Grantee shall produce such books and records for City’s inspection at Grantee’s corporate office located no more than seventy-five (75) miles from City Hall or at such other mutually agreed upon location within the City. To the extent it is necessary for City to send representatives to a location outside of the City to inspect Grantee’s books and records, Grantee shall be responsible for all travel costs incurred by City representatives.

6. **Reports and Maps to be Filed with City.**

   a. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in form and substance as Exhibit D attached hereto.
b. City and Grantee shall mutually agree, at the times and in the form prescribed, such other reasonable reports with respect to Grantee’s operations pursuant to this Franchise.

c. If required by City, Grantee shall furnish to and file with City Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.

7. **Periodic Evaluation**.

   a. City may require evaluation sessions at any time during the term of this Franchise, upon thirty (30) days written notice to Grantee.

   b. Topics that may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.

   c. As part of any periodic evaluation proceeding the City shall have the right to visit and/or inspect the Grantee’s headend facility, customer service center and any other facilities of Grantee whether or not located in the City to the extent such facilities are in any way related to Grantee’s ability to provide Cable Services to the City.

   d. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise that are both economically and technically feasible as measured over the remaining life of the Franchise.

**SECTION 8  GENERAL FINANCIAL AND INSURANCE PROVISIONS**

1. **Performance Bond**.

   a. Thirty (30) days prior to initiation of any substantial System construction in excess of One Hundred Thousand and No/100 Dollars ($100,000), Grantee shall furnish and file with the City a performance and payment bond, or a performance and payment bond together with such other security as is approved by the City. The bond shall run to the City in the penal sum of not less than fifteen percent (15%) of the total construction costs to be undertaken by Grantee. The bond shall be conditioned upon the faithful performance by Grantee of all terms and
conditions of the System construction. The rights reserved to the City with respect to the bond or other security are in addition to all other rights the City may have under the Franchise or any other law.

b. Following the completion of the System construction, as determined by the City, the requirement to maintain said bond above shall be extinguished.

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

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

2. Letter of Credit.

a. At the time of acceptance of this Franchise, Grantee shall deliver to City an irrevocable and unconditional letter of credit, in form and substance acceptable to City, from a National or State bank approved by City, in the amount of Five Thousand and No/100 Dollars ($5,000).

b. The letter of credit shall provide that funds will be paid to City, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this section, in payment for any monies owed by Grantee to City or any Person pursuant to its obligations under this Franchise, or in payment for any damage incurred by City or any Person as a result of any acts or omissions by Grantee pursuant to this Franchise.

c. In addition to recovery of any monies owed by Grantee to City or any Person or damages to City or any Person as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the letter of credit the following penalties:

i. For failure to timely complete System construction as provided in this Franchise unless City approves the delay, the penalty shall be Two Hundred Fifty and No/100 Dollars ($250.00) per day for each day, or part thereof, such failure occurs or continues.

ii. For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the penalty shall be One Hundred Fifty and No/100 Dollars ($150.00) per day for each day, or part thereof, such failure occurs or continues.

iii. Fifteen (15) days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be
Two Hundred Fifty and No/100 Dollars ($250.00) per day for each day, or part thereof, such failure occurs or continues.

iv. For failure to provide the Services Grantee has proposed, including, but not limited to, the implementation and the utilization of the access Channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be Two Hundred Fifty and No/100 Dollars ($250.00) per day for each day, or part thereof, such failure occurs or continues.

v. For Grantee’s breach of any written contract or agreement with or to the City or its designee, the penalty shall be Two Hundred Fifty and No/100 Dollars ($250.00) per day for each day, or part thereof, such breach occurs or continues.

vi. For failure to comply with any of the provisions of this Franchise, or other City ordinance for which a penalty is not otherwise specifically provided pursuant to this subparagraph (c), the penalty shall be One Hundred Fifty and No/100 Dollars ($150.00) per day for each day, or part thereof, such failure occurs or continues.

d. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

e. Whenever the City believes that the Grantee is in violation of one (1) or more of the material terms, conditions, or provisions of this Franchise, a written notice shall be given to the Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford the Grantee the opportunity to remedy the violation. Grantee shall have thirty (30) days subsequent receipt of written notice in which to correct the violation. Grantee shall, within ten (10) business days of receipt of written notice, notify the City if there is a dispute as to whether a violation has, in fact, occurred. Such notice by the Grantee shall specify with reasonable particularity the matters disputed and shall stay the running of the above-described time for cure.

f. The City shall hold a hearing regarding the alleged violation(s) at a regularly scheduled or specially scheduled City Council meeting with at least ten (10) days prior written notice to Grantee. The Grantee shall be afforded an opportunity to be heard and present evidence at such hearing. The City shall make a determination as to the alleged violation(s) and shall make written findings of fact relative to its determination. Grantee may appeal decision of City to court of competent jurisdiction.

g. If after hearing the dispute, the City Council finds that a violation exists, then the Grantee shall have twenty (20) days within which to cure or correct any violation before any penalty to sanction may be imposed.
h. The time for Grantee to correct any alleged violation shall be extended by the City if the necessary action to correct the alleged violation is of such a nature or character as to require more than thirty (30) days and provided Grantee commences corrective action within thirty (30) days and thereafter exercises due diligence to correct the violation.

i. If said letter of credit or any subsequent letter of credit delivered pursuant thereto expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or replaced letter of credit shall be of the same form and with a bank authorized herein and for the full amount stated in subparagraph (a) of this section.

j. If City draws upon the letter of credit or any subsequent letter of credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement letter of credit or certification of replenishment for the full amount stated in Section 8.2(a) as a substitution of the previous letter of credit. This shall be a continuing obligation for any draws upon the letter of credit.

k. If any letter of credit is not so replaced or replenished, City may draw on said letter of credit for the whole amount thereof and use the proceeds as City determines in its sole discretion. The failure to replace or replenish any letter of credit may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the letter of credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee that are in default, shall not be a waiver or release of such default.

l. The collection by City of any damages, monies or penalties from the letter of credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the letter of credit, be deemed a waiver of any right of City pursuant to this Franchise or otherwise.

3. **Liability Insurance**

a. Upon the effective date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise commercial general liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than “A” that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims that may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to
property, resulting from Grantee’s vehicles, products and operations. Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring Grantee and the City in the minimum amounts of:

i. Two Million and No/100 Dollars ($2,000,000.00) for bodily injury or death to any one (1) Person;

ii. Two Million and No/100 Dollars ($2,000,000.00) for bodily injury or death resulting from any one accident.

b. The following endorsements shall be attached to the liability policy:

i. The policy shall provide coverage on an “occurrence” basis.

ii. The policy shall cover personal injury as well as bodily injury.

iii. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage.

iv. Broad form property damage liability shall be afforded.

v. City shall be named as an additional insured on the policy.

vi. An endorsement shall be provided that states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

vii. Standard form of cross-liability shall be afforded.

viii. An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to City.

c. Grantee shall submit to City documentation of the required insurance, including a copy of the policy showing that the City is an additional insured, as well as all properly executed endorsements.

4. **Indemnification.**

a. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the “Indemnified Parties”) harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney’s fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee’s operations, the exercise of the
Franchise, the breach of Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee’s employees, including compliance with Social Security and withholdings. Grantee shall not be required to provide indemnification to City for programming cablecast over the PEG access Channels administered by City.

b. The indemnification obligations of Grantee set forth in this Franchise not limited in Grantee under Workers’ Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.

c. City does not, and shall not, waive any rights against Grantee that it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.

d. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee’s operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

e. Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees. City shall hold Grantee harmless, to the fullest extent allowed by law, for any damage resulting from the negligence or misconduct of the City or its officials, boards, commissions, agents, or employees in utilizing any PEG access Channels, equipment, or facilities and for any such negligence or misconduct by City in connection with work performed by City and permitted by this Franchise, on or adjacent to the Cable System.

5. Grantee’s Insurance.

Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

a. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:

i. Promptly notify Grantee in writing of any claim or legal proceeding that gives rise to such right;
ii. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

iii. Fully cooperate with reasonable requests of Grantee, at Grantee’s expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (ii) above.

SECTION 9 SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City’s Right to Revoke. In addition to all other rights that City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that after notice and an opportunity to cure as reordered herein:

   a. Grantee has violated material provision(s) of this Franchise and has not cured; or

   b. Grantee has attempted to evade any of the provisions of the Franchise; or

   c. Grantee has practiced fraud or deceit upon City.


   a. City shall provide Grantee with written notice of a Franchise violation consistent with Section 8.2(e) of this Franchise and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise.

   b. Should City determine to proceed with a revocation proceeding, Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

   c. Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate State or Federal court or agency.

   d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

3. Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for
damages resulting from the abandonment, including all costs incident to removal of the System.

4. **Removal After Abandonment, Termination or Forfeiture.**

   a. In the event of termination or forfeiture of the Franchise or abandonment of the System, City shall have the right to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City.

   b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City’s demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City’s demand for removal is given, City shall have the right to declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

5. **Sale or Transfer of Franchise.**

   a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate change in Grantee’s parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee’s assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted; provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.

   b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee’s parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 9.5. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. In any event, as used herein, a new “controlling interest” shall be deemed to be created upon the acquisition through any transaction or group of transactions of a legal or beneficial interest of fifteen percent (15%) or more by one (1) Person. Acquisition by one (1) Person of an interest of five percent (5%) or more in a single transaction shall require notice to City.

   c. The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, the following:
i. All contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof; and

ii. A list detailing all documents filed with any State or Federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the FEC, the SEC or applicable State departments and agencies. Upon request, Grantee shall provide City with a complete copy of any such document; and

iii. Any other documents or information related to the transaction as may be specifically requested by the City.

d. City shall have such time as is permitted by Applicable Laws in which to review a transfer request.

e. The Grantee shall reimburse City for all the legal, administrative, and consulting costs and fees associated with City’s review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee. Grantee may not itemize any such reimbursement on Subscriber bills, but may recover such expenses in its Subscriber rates.

f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this section be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments required by the City (outlined in Exhibit F attached hereto).

g. In the event of any proposed sale, transfer, corporate change, or assignment pursuant to subparagraph (a) or (b) of this section, City shall have the right to purchase the System.

h. City shall be deemed to have waived its right to purchase the System pursuant to this section only in the following circumstances:

i. If City does not indicate to Grantee in writing, within sixty (60) days of receipt of written notice of a proposed sale, transfer, corporate change, or assignment as contemplated in Section 9.5(g) above, its intention to exercise its right of purchase; or

ii. It approves the assignment or sale of the Franchise as provided within this section.
i. No Franchise may be transferred if City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.

SECTION 10 PROTECTION OF INDIVIDUAL RIGHTS

1. Discriminatory Practices Prohibited. Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other Applicable Laws, and all executive and administrative orders relating to nondiscrimination.

2. Subscriber Privacy.

   a. No signals may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year, which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber’s failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of activity planned for the purpose of monitoring individual viewing patterns or practices.

   b. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee’s service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year, which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber’s failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

   c. Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this section.
d. Grantee shall not include any mandatory arbitration provisions of any kind in any Subscriber contracts.

SECTION 11 UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive Services of the System without Grantee’s authorization.

2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

3. Penalty. Any firm, Person, group, company, or corporation found guilty of violating this section shall be subject to the fullest extent of any local, State or Federal statutes pertaining to such violations.

SECTION 12 MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.

2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

3. Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in Federal, State or local laws; provided, however, nothing herein shall restrict City’s exercise of its police powers.

4. Compliance with Federal, State and Local Laws.

a. If any Federal or State law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any
service or act that may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to State and Federal laws and regulations and rules regarding cable communications as they become effective.

b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision that had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

5. **Nonenforcement by City.** Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

6. **Rights Cumulative.** All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, nor or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

7. **Grantee Acknowledgement of Validity of Franchise.** Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

8. **Force Majeure.** Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to:
acts of God, fire, explosion, vandalism, storm or other similar catastrophes; national emergencies; insurrection; riots; wars; or strikes, lockouts or work stoppages.

SECTION 13  PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. **Publication, Effective Date.** This Franchise shall be published in accordance with applicable local and State law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.

2. **Acceptance.**

   a. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.

   b. Grantee shall pay all costs and expenses incurred by the City in connection with the publication of this Franchise to the maximum extent permitted under Applicable Law.

   c. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.

   d. Grantee shall accept this Franchise in the following manner:

      i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

      ii. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates, and guaranties, as required herein, that have not previously been delivered.
EXHIBIT A. OWNERSHIP

Grantee must maintain on file with City an accurate chart outlining its complete ownership structure.

Corporate Structure for Arvig Enterprises

Arvig Enterprises, Inc.

DBA
Arvig Communications Systems (ACS)

Tekstar Cablevision, Inc.
EXHIBIT B. GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS

Initially, Grantee shall make one (1) Channel available exclusively for PEG use (“PEG Channels”). Grantee shall also make available one (1) additional Channel for PEG use (for a total of two (2) PEG Channels) upon ninety (90) days advance written notice from the City. The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Grantee may upon written request to City, utilize any PEG Channels for commercial or non-commercial programming when they are not scheduled for PEG use. City and Grantee shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

City may not request additional Channel capacity beyond the two (2) Channels for PEG use except in accordance with Applicable Laws. City shall be responsible for all programming requirements, including but not limited to scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair. Grantee shall in no way be responsible for any content or copyright requirements related to PEG programming.

2. PEG OPERATIONS

City may, in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the expenses of supporting the PEG Channels. Throughout the term of this Franchise Grantee shall provide City with an audio feed of a music service to provide background sound for the City’s character generated bulletin board to be cablecast on one (1) PEG Channel.

3. RELOCATION OF PEG CHANNELS

Grantee shall be entitled to relocate any PEG access Channel to a different Channel number. Grantee shall provide City and all Subscribers with at least sixty (60) days prior written notice of any relocation. In the event any PEG access Channel(s) is relocated, Grantee shall reimburse City up to Five Thousand and No/100 Dollars ($5,000.00) for all costs associated with such move including change of letterhead, promotion of new Channel location in the situation where the Grantee has initiated the request to relocate such Channel. Relocation costs resulting for requirements of Applicable Law changes shall be the burden of the City.

4. PROMOTION OF PEG ACCESS

To the extent permitted by Grantee’s billing process, Grantee shall allow the City to place bill stuffers in Grantee’s Subscriber statements at a cost to the City not to exceed Grantee’s cost, no more than once per year upon the written request of the City and at such times that the placement of such materials would not materially and adversely effect Grantee’s cost for the production and mailing of such statements. The City agrees to pay
Grantee in advance for the actual cost of such bill stuffers. Grantee shall also make available PEG access information provided by City in Subscriber packets at the time of installation and at the counter in the System’s business office service the Service Area.

5. PEG ACCESS SUPPORT.

Grantee shall collect, on behalf of City, a per Subscriber fee of twenty-five cents (25¢) per month, solely to fund PEG access related expenditures (hereinafter “Access Fee”). The twenty-five cent (25¢) Access Fee shall be automatically adjusted every two (2) years during the term of this Franchise, equal to the cumulative increase in the Consumer Price Index (“CPI”) during the preceding years. Any and all payments by Grantee to City in support of PEG access programming shall not be deemed “Franchise Fees” within the meaning of Section 622 of the Cable Act (47 U.S.C. Section 542).

6. SERVICE TO PUBLIC BUILDINGS

Grantee shall provide live origination points to the Ind. School District No. 2170 and City Hall to facilitate the exchange of programming, including live cablecast programming from those buildings on the Grantee’s Cable System and the City’s network. Grantee shall further provide, free of charge, all necessary interface equipment at the agreed upon point of interconnection to allow the City to cablecast programming to Grantee’s headend for cablecast on Grantee’s Cable System.

7. DROPS TO DESIGNATED BUILDINGS.

a. Grantee shall provide free of charge throughout the term of this Franchise, Installation of one (1) network Drop, one (1) cable outlet, and one (1) Converter, if necessary, and the most highly penetrated level of Cable Service offered by Grantee, excluding pay-per-view, pay-per-channel (premium) programming, high-speed data services or newly created non-video Cable Services, without charge to the institutions identified on Exhibit C attached hereto and made a part hereof, and such other public institutions subsequently designated by City as determined in City’s sole discretion. This requirement shall not include any digital tier of Services Grantee may offer unless and until such time as Grantee’s digital programming reduces the amount of spectrum available for analog programming to less than approximately sixty (60) Channels of analog programming. Grantee shall be responsible for the costs of extension to subsequently designated institutions for the first three hundred fifty (350) feet as measured from Grantee’s nearest active plant. The institution shall pay the net additional Drop or extension costs beyond the three hundred fifty (350) feet.

b. Additional Subscriber network Drops and or outlets in any of the locations identified on Exhibit C will be installed by Grantee at the Grantee’s usual time and material pricing. Alternatively, said institutions may add outlets at their own expense, as long as such Installation meets Grantee’s standards and approval that shall not be unreasonably withheld. Grantee shall have three (3) months from the date of City designation of additional accredited schools or public institutions or relocations to
complete construction of the Drop and the outlet unless weather or other conditions beyond the control of Grantee requires more time.

c. The City shall coordinate with all franchised cable operators providing Cable Service within the City to ensure that the requirements imposed on such cable operators with respect to free Service Drops to designated buildings shall be no more favorable nor less burdensome to any one cable operator over the other and are not unduly discriminatory.
EXHIBIT C. SERVICE TO PUBLIC AND PRIVATE BUILDINGS

1. Staples Government Center
2. Northside Fire Hall
3. Community Center
4. Light Shop
5. Water Plant
6. Street Shop
7. All State accredited public and private K-12 schools.
EXHIBIT D. FRANCHISE FEE PAYMENT WORKSHEET

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CABLE TELEVISION FRANCHISE ORDINANCE

FOR THE

CITY OF STAPLES, MINNESOTA

AND

CC VIII OPERATING, LLC

D/B/A

CHARTER COMMUNICATIONS

January 10, 2006
STATEMENT OF INTENT AND PURPOSE

City intends, by the adoption of this Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable system.

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee’s technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;

2. Grantee’s plans for constructing, upgrading, and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard.

3. The Franchise granted to Grantee by City complies with the existing applicable State statutes, Federal laws and regulations; and

4. The Franchise granted to Grantee is nonexclusive.

SECTION 1 SHORT TITLE AND DEFINITIONS

1. **Short Title.** This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance.

2. **Definitions.** For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

   a. **Applicable Laws** means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.
b. “Basic Cable Service” means any Service tier that includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. §543(b)(7).

c. “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(6).

d. “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

i. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

ii. a facility that serves Subscribers without using any public Right-of-Way;

iii. a facility of common carrier that is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541 (c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

iv. an open video system that complies with 47 U.S.C. § 573; or

v. any facilities of any electric utility used solely for operating its electric utility systems.

e. “Channel” or “Cable Channel” means 6 MHz of the electromagnetic frequency spectrum that is used in a Cable System and which is capable of delivering an analog television Channel as defined by the FCC.

f. “City” means City of Staples, a municipal corporation, in the State of Minnesota, acting by and through its City Council, or its lawfully appointed designee.

g. “City Council” means the governing body of the City of Staples, Minnesota.

h. “Converter” means an electronic device that converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.
i. “Drop” means the cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.

j. “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

k. “Franchise” or “Cable Franchise” means this franchise ordinance and the regulatory and contractual relationship established hereby.

l. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.

m. “Grantee” is CC VIII Operating, LLC, d/b/a Charter Communications, its lawful successors, transferees or assignees.

n. “Gross Revenue” means any and all revenue derived by Grantee from the provision of Cable Services in the City.

o. “Installation” means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.

p. “Lockout Device” means an optional mechanical or electrical accessory to a Subscriber’s terminal that inhibits the viewing of a certain program, certain Channel, or certain Channels provided by way of the Cable System.

q. “Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers.

r. “Normal Operating Conditions” means those Service conditions that are within the control of Grantee. Those conditions that are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
s. “Other Programming Service” means information that a cable operator makes available to all Subscribers generally.

t. “Pay Television” means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Other Programming Services.

u. “PEG” means public, educational and governmental.

v. “Person” is any Person, firm, partnership, association, corporation, company, limited liability entity or other legal entity.

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

x. “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

y. “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.

z. “Standard Installation” means any residential or commercial Installation that can be completed using a Drop of one hundred fifty (150) feet or less.

aa. “Subscriber” means any Person who lawfully receives Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant not the building owner. If a bulk-billed account consists of twenty (20) apartments, and the monthly billing is Four hundred fifty and No/100 Dollars ($450.00), and the published basic/expanded basic residential rate is Forty-five and No/100 Dollars ($45.00), then the number of equivalent billing units (“EBUs”) for the account is ten (10) EBUs. In all cases, Grantee’s calculation of (“EBUs”) shall be consistent with how Grantee reports EBUs to commercial programmers.

bb. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2 GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the
obligations and comply with all provisions herein, shall be deemed a violation of this Franchise.

2. **Grant of Nonexclusive Authority.**

   a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System and shall have the right and privilege to provide Cable Service. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.

   b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

   c. This Franchise shall be nonexclusive, and City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service.

3. **Lease or Assignment Prohibited.** No Person may lease Grantee’s System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9.5 of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.

4. **Franchise Term.** This Franchise shall be in effect for a period of fifteen (15) years from the date of execution by City, unless sooner renewed, revoked or terminated as herein provided.

5. **Previous Franchises.** Upon acceptance by Grantee as required by Section 13.2 herein, this Franchise shall supersede and replace any previous ordinance or other authorization granting a franchise to Grantee. Ordinance No. 390 is hereby expressly repealed.

6. **Favored Nations.** In the event the City enters into a franchise with any other cable operator other than the Grantee to enter into the City’s Rights-of-Way for the purpose of constructing and operating a Cable System or providing Cable Service to any part of the Service Area, the material provisions thereof shall be on terms and conditions no more favorable or less burdensome than those in this Franchise pertaining to: 1) the area served; 2) public, educational or governmental access requirements; or 3) franchise fees.
Nothing in this Section 2.5 shall prevent the City from imposing additional terms and conditions on any other cable operator to which it may grant a franchise.

7. **Compliance with Applicable Laws, Resolutions and Ordinances.**

   a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power, statutory rights, local ordinance-making authority, and eminent domain rights of City. This Franchise may also be modified or amended with the written consent of City and Grantee as provided in Section 12.3 herein.

   b. Grantee shall comply with the terms of any City ordinance or regulation of general applicability that addresses usage of the Rights-of-Way within City, which may have the effect of superseding, modifying or amending the terms herein, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users so long as the Grantee is given advance notice of pending changes and is afforded the opportunity to participate in such ordinance and regulation change prior to enactment.

   c. In the event of any conflict between this Franchise and any City ordinance or regulation that addresses usage of the Rights-of-Way, the conflicting terms of this Franchise shall be superseded by such City ordinance or regulation, except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users so long as Grantee is given advance notice of pending changes and is afforded the opportunity to participate in such ordinance and regulation change prior to enactment.

   d. In the event any City ordinance or regulation that addresses usage of the Rights-of-Way adds to, modifies, amends, or otherwise differently addresses issues addressed in this Franchise, Grantee shall comply with such ordinance or regulation of general applicability, regardless of which requirement was first adopted except that Grantee shall not, through application of such City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way which exceed burdens on similarly situated Rights-of-Way users.

   e. In the event Grantee cannot determine how to comply with any Right-of-Way requirement of City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee’s proposed interpretation, to City, in accordance with Section 2.9. City shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed
interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.

8. **Rules of Grantee.** Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.

9. **Territorial Area Involved.** This Franchise is granted for the corporate boundaries of City, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential cable Subscribers because of the income of the potential cable Subscribers or the area in which such group resides.

10. **Written Notice.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City’s administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

   If to City:   City Administrator  
               122 6th Street Northeast  
               Staples, MN  56479

   If to Grantee:   Charter Communications  
                    1255 East Circle Drive NE  
                    Rochester, MN  55906

   With non-binding courtesy copy to:   Charter Communications  
                                            12405 Powerscourt Drive  
                                            St. Louis, MO  63131-3874

   Such addresses may be changed by either party upon notice to the other party given as provided in this section.

11. **Ownership of Grantee.** Grantee represents and warrants to City that the names of the shareholders, partners, members or other equity owners of the Grantee and any of the shareholders, partners, members and/or other equity owners of Grantee are as set forth in Exhibit A hereto.

**SECTION 3  CONSTRUCTION STANDARDS**

1. **Registration, Permits, Construction Codes, and Cooperation.**
a. Grantee shall comply with the construction requirements of local, State and Federal laws.

b. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with Federal or State laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.

c. Reimbursement paid through the permitting process is separate and in addition to any other fees included in the Franchise. Grantee, at the time of or prior to submitting construction plans, shall provide City with a description of the type of Service to be provided by the Grantee in sufficient detail for City to determine compliance with the Franchise and Applicable Laws.

d. City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with the procedures established by the City Administrator or his or her designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.

e. Grantee shall first obtain permits or comply with permit requirements prior to commencing any construction or reconstruction on the Rights-of-Way and public places of City.

f. Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Laws or this Franchise.

g. Grantee shall meet with developers to ensure that the newly constructed Cable System facilities are installed in new developments within City in a timely manner.

h. On or about thirty (30) days prior to activation of the Cable System, affected Subscribers will receive a letter notifying them of same, which letter shall include Grantee’s telephone number that Subscribers can use to contact Grantee with any questions or concerns they may have. No less than forty-eight (48) hours before construction, all affected houses will receive written notification regarding Grantee’s construction schedule, which will also include Grantee’s telephone number. Nothing shall prohibit Grantee from consolidating the notices required in this subparagraph.

i. Grantee shall hold an annual meeting with City to coordinate construction plans of both parties for the upcoming year.
2. **Ongoing Construction.** Grantee shall notify City at least ten (10) days prior to the commencement of any construction in any Rights-of-Way. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

3. **Use of Existing Poles or Conduits.**

   a. Grantee shall utilize existing and or replacement poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures shall be removed or modified by Grantee at its own expense whenever City determines that the public convenience would be enhanced thereby.

   b. The facilities of Grantee shall be installed underground in those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost. If City requires utilities to bury lines that are currently overhead, and the City financially participates in said undergrounding, then the City will provide the same proportionate cost sharing to the Grantee.

4. **Minimum Interference.**

   a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee’s work in the Rights-of-Way.

   b. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.

   c. Grantee shall provide advance notice to any private property owner and shall obtain authorization prior to commencing work on private property.

5. **Disturbance or Damage.** Any and all Rights-of-Way, or public property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to
Grantee’s work, as determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into condition as good as that prevailing prior to Grantee’s work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City’s invoice thereof.

6. **Temporary Relocation.**

   a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary or less expensive for City.

   b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than five (5) days advance notice to arrange such temporary wire alterations.

7. **Emergency.** Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Administrator, police chief, fire chief, or their delegates, to remove or damage any of Grantee’s facilities, no charge shall be made by Grantee against City for restoration, repair or damages.

8. **Tree Trimming.** Grantee shall not trim any trees or other foliage located on private property prior to obtaining the written consent of the owner of said property. Any trimming of trees or other foliage by the Grantee in the Rights-of-Way shall not occur prior to obtaining the written consent of the City. Such trees or other foliage shall be trimmed at Grantee’s own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by City.

9. **Protection of Facilities.** Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee’s facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system. Any such activity shall be performed only after full compliance with any advance notice requirements pursuant to State statute as well as Gopher State One Call for the purpose of locating any existing underground facility of the Grantee.
10. **Installation Records.** Each Grantee shall keep accurate Installation records of the location of all facilities in the Rights-of-Way and public ways and furnish them to City upon request. Grantee shall cooperate with City to furnish such information in an electronic mapping format, if possible compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, Grantee shall provide City with Installation records in an electronic format, if possible compatible with the then-current City electronic mapping format showing the locations of the underground and above ground facilities. Such electronic formatting will be available in the format currently used by the Grantee or future formats as may become used by the Grantee.

11. **Locating Facilities.**

   a. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days. Any such activity shall be performed only after full compliance with any required advance notice pursuant to State statute as well as Gopher State One Call for the purpose of locating any existing underground facility of the Grantee.

   b. City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.

12. **City’s Rights.**

   a. When City uses its prior superior right to the Rights-of-Way and public ways, Grantee shall move its property that is located in the Rights-of-Way and public ways, at its own cost, to such a location as City and the Grantee mutually agree.

   b. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

13. **Facilities in Conflict.** If, during the course of a project, City determines Grantee’s facilities are in conflict, the following shall apply:
a. Prior to City Notice to Proceed to Contractor: Grantee shall, within a reasonable
time, but in no event exceeding three (3) months, remove or relocate the conflicting
facility. This time period shall begin running upon receipt by Grantee of written
notice from City. However, if both City and Grantee agree, the time frame may be
extended based on the requirements of the project.

b. Subsequent to City Notice to Proceed to Contractor: City and Grantee will
immediately begin the coordination necessary to remove or relocate the facility.
Removal or relocation is to begin no later than fourteen (14) days, if practicable, after
written notification from City of the conflict.


a. Subject to Grantee’s compliance with Section 3.13 above, if Grantee’s relocation
effort so delays construction of a public project causing City to be liable for delay
damages, Grantee shall reimburse City for those damages attributable to the delay
created by Grantee. In the event Grantee should dispute the amount of damages
attributable to Grantee, the matter shall be referred to the City engineer for a decision.
In the event that Grantee disagrees with the City engineer’s decision, the matter shall
be submitted to the City Administrator or the City Administrator’s designee for
determination, whose decision shall be final and binding upon Grantee as a matter of
City review, but nothing herein waives any right of appeal to the courts.

b. In the event City becomes aware of a potential delay involving Grantee’s facilities,
City shall promptly notify Grantee of this potential delay.

15. Interference with City Facilities. The Installation, use and maintenance of the Grantee’s
facilities within the Rights-of-Way and public ways authorized herein shall be in such a
manner as not to interfere with City’s placement, construction, use and maintenance of its
Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers,
traffic signal systems or other City systems that have been, or may be, installed,
maintained, used or authorized by City.

16. Interference with Utility Facilities. Grantee agrees not to install, maintain or use any of
its facilities in such a manner as to damage or interfere with any existing facilities of
another utility located within the Rights-of-Way and public ways of City and agrees to
relocate its facilities, if necessary, to accommodate another facility relocation. Nothing
in this section is meant to limit any rights Grantee may have under Applicable Laws to be
compensated for the cost of relocating its facilities from the utility that is requesting the
relocation.

17. Collocation. To maximize public and employee safety, to minimize visual clutter of
aerial plant, and to minimize the amount of trenching and excavation in and along City
Rights-of-Way, and sidewalks for underground plant, Grantee shall make every
commercially reasonable effort to collocate compatible facilities within the Rights-of-
Way subject to the engineering requirements of the owners of utility poles and other facilities.

18. **Safety Requirements.**

   a. Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage or injuries.

   b. Grantee shall install and maintain its System and other equipment in accordance with City’s codes and the requirements of the National Electric Safety Code and all other applicable FCC, State and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

   c. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

**SECTION 4   DESIGN PROVISIONS**

1. **System Construction: Minimum Channel Capacity.**

   a. Grantee shall develop, construct, operate and maintain for the term of this Franchise a System providing a minimum of 750 MHz capacity.

   b. Grantee shall develop, construct and operate a System capable of providing non-video services such as high-speed date transmission, internet access, and Other Programming Services.

   c. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments, and further subject to Grantee’s signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City’s rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6 and Exhibit B.

2. **Interruption of Service.** Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System.

3. **Emergency Alert Capability.** Grantee shall at all times comply with applicable State and Federal Emergency Alert System standards pursuant to Title 47, Section 11, Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time.
4. **Technical Standards.** The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

5. **Special Testing.**

   a. City shall have the right to inspect and test all construction or Installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System as desired at any time during the term of this Franchise. Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance or for routine verification of Grantee’s compliance with FCC technical standards. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.

   b. Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations that may be the focus of concern. If, after such meetings and inspections, City wishes to require special tests and the thirty (30) days have elapsed, the tests shall be conducted by Grantee at Grantee’s expense and may be observed by a qualified engineer selected by City. Grantee shall participate and cooperate in such testing and shall not assess City or Subscribers any additional fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing. If such special testing establishes that the System meets all required FCC technical standards set forth at Section 4.5, the City shall bear the expense for such special testing. If such special testing establishes that the System does not meet all required FCC technical standards set forth at Section 4.5, Grantee shall bear the expense for such special testing.

6. **FCC Reports.** The results of any tests required to be filed by Grantee with the FCC shall upon request of City also be filed with City or its designee within ten (10) days of the conduct of such tests.

7. **Annexation.** Upon the annexation of any additional land area by the City, if the annexed area is not currently served by a cable operator it will be subject to the other provisions of this Section 4. If the annexed area is served by a cable operator, Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) days of written notification by the City to Grantee. A cable operator other than Grantee whose Cable System already passes homes in an annexed area shall not extend its Cable System beyond those homes that it passes at the time the annexation occurs unless it otherwise obtains a franchise from the City.
8. **Line Extension.**

   a. Grantee shall construct and operate its Cable System so as to provide Service to all parts of its Franchise area as provided in this Franchise and having a density equivalent of seven (7) residential units per one-quarter (1/4) cable mile of System, as measured from the nearest tap on the Cable System.

   b. Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a proportionate share of the actual cost of extending the Service.

   c. Any residential and/or commercial unit located within one hundred fifty (150) feet of the nearest tap on Grantee’s System shall be connected to the System at no charge other than the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred fifty (150) foot limit, extend Service to such Subscriber provided that the Subscriber shall pay the net additional Drop costs.

9. **Lockout Device.** Upon the request of a Subscriber, Grantee shall make available by sale or lease a Lockout Device allowing Channels on the System to be blocked.

**SECTION 5 SERVICE PROVISIONS**

1. **Regulation of Service Rates.** City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the City chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The City shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. City reserves the right to regulate rates for any future Services to the extent permitted by law.

2. **Non-Standard Installations.** Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met. In such case, Grantee may charge for the incremental increase in material and labor costs incurred beyond the Standard installation.

3. **Sales Procedures.** Grantee shall not exercise deceptive sales procedures when marketing any of its Services within City. In its initial communication or contact with a non-Subscriber or current Subscriber seeking alternative options, Grantee shall inform the non-Subscriber of all levels of Service available, including the lowest priced Basic Cable
Service tier and free Service tiers. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.

4. **Consumer Protection and Service Standards.** Grantee shall comply with the standards and requirements for customer service set forth below. Grantee shall also comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309, the current requirements of which are set forth at Exhibit E.

a. **Cable System office hours and telephone availability:**

   i. Grantee will maintain a local, toll-free or collect call telephone access line that will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

      (1) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

      (2) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

   ii. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

   iii. Grantee shall not be required to acquire equipment and or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

   iv. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

b. **Installations, Outages and Service Calls.** Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

   i. Standard Installations will be performed within seven (7) business days after an order has been placed. “Standard” Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.
ii. Excluding conditions beyond the control of Grantee, Grantee will begin working on “Service Interruptions” promptly and in no event later than twenty-four (24) hours after the interruption becomes known, Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. Grantee shall resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.

iii. The “appointment window” alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

iv. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

v. If Grantee’s representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time that is convenient for the customer.

c. Communications between Grantee and Subscribers.

i. Notifications to Subscribers:

(1) Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(a) Products and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services;

(c) Installation and Service maintenance policies;

(d) Instructions on how to use the Cable Service;

(e) Channel positions of the programming carried on the System; and

(f) Billing and complaint procedures, including the address and telephone number of the City.

(2) Subscribers will be notified of any changes in rates, programming Services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the
changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 5.4(c)(i)(1). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any Federal agency, State or City on the transaction between the operator and the Subscriber.

(3) All programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments.

ii. Billing:

(1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

iii. Credits: Credits for Service will be issued no later than the Subscriber’s next billing cycle following the determination that a credit is warranted.

Grantee shall, upon written request from City, provide City with a compliance report specific to the System in the Service Area, which report shall, at a minimum, describe in detail Grantee’s compliance with the terms and provisions of this section.

5. **Subscriber Contracts.** Upon request, Grantee shall file with City any standard form residential Subscriber contract to the extent utilized by Grantee. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee’s current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

6. **Refund Policy.**

a. If a Grantee’s Cable Service is interrupted or discontinued for twenty-four (24) or more consecutive hours, its Subscribers must, upon request, be credited pro rata for such interruption. Credits must be issued no later than the Subscriber’s next billing cycle following the determination that a credit is warranted. For this purpose, every month will be assumed to have thirty (30) days.

b. In the event a Subscriber establishes or terminates Service and receives less than one (1) full month of Service, Grantee shall prorate the monthly rate on the basis of the
number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be processed promptly, upon the return of the equipment supplied by the Grantee if Cable Service is terminated.

7. **Late Fees.** Grantee shall comply with all applicable State and Federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee’s compliance with all Applicable Laws to the maximum extent legally permissible.

8. **Local Office Policy.**

   a. Grantee shall, at its sole discretion, maintain a location in City for receiving Subscriber inquiries, bill payments, and equipment transfers. The location must be staffed by a Person capable of receiving inquiries and bill payments and the location shall be open hours that are at the sole discretion of the Grantee that are economic and business logical. If there is no local business office located in the City, equipment exchanges requiring a truck roll shall be at no charge to the Subscriber or City. In addition, Grantee shall, at its sole discretion, maintain a drop box within the Service Area for receiving Subscriber payments after hours.

   b. Payments at Grantee’s drop box location shall be deemed received on the date such payments are picked up by Grantee if deposited by no later than 12 Noon of that day. Payments deposited later than 12 Noon shall be considered to be received in the following business day’s processing.

**SECTION 6 ACCESS CHANNEL(S) PROVISIONS**

1. **Grantee Support for PEG Access.** Grantee shall provide the following support for PEG access usage within the Service Area:

   a. Provision of the Channels designated in Exhibit B of this Agreement for local PEG programming and access use at no charge in accordance with the requirements of Exhibit B.

   b. Support of PEG programming to the extent specified in Exhibit B of this Agreement.

   c. Provision of free public building Installation and Cable Service as more clearly specified in Exhibit B.

2. **Compliance with Federal Law.** Grantee and City agree that the PEG access support fee referenced in Exhibit B will not be deemed to be “Franchise Fees” within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such obligations shall not be deemed to be (i) “payments in kind” or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 7 hereof or (ii) part of the Franchise Fees to be paid to City by Grantee pursuant to Section 7 hereof.
SECTION 7  OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City Administrator or other designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee’s operation under the Franchise; provided, however, that the City Council shall retain the sole authority to take enforcement action pursuant to this Franchise.

2. Franchise Fee.

a. During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by Federal statute.

b. Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Grantee’s fiscal quarters together with a report showing the basis for the computation in form and substance substantially the same as Exhibit D attached hereto. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the maximum rate permitted under State law, or twelve percent (12%) if no such rate is legally specified.

c. All amounts paid shall be subject to audit and recomputation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Grantee’s books and records pursuant to Section 7.6 of this Franchise and discover that Grantee has failed to fully remit five percent (5%) or more of the Franchise Fees due and owing the City, Grantee shall bear all of the City’s costs and expenses associated with such review.

3. Discounted Rates.

a. If Grantee’s Subscribers are offered what is, in effect, a discount for “bundled” services (i.e. Subscribers obtain Cable Services and some other, non-cable goods or service) then for the purpose of calculating Gross Revenues, the discount shall be applied proportionately to cable and non-cable goods and services.

b. Consistent with Section 7.3(a) above, in no event shall Grantee be permitted to evade or reduce applicable Franchise Fee payments.

4. Not Franchise Fees.

a. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this Section shall take precedence over all other payments, contributions,
services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise.

b. Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to City pursuant to this Franchise shall be deducted from or credited or offset against any taxes, fees or assessments or general applicability levied or imposed by City or any other governmental authority.

c. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments or general applicability levied or imposed or any other governmental authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made pursuant by Grantee to City to this Franchisee that shall be deemed to be separate and distinct obligations of Grantee.

5. Access to Records. The City shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee that relate to System operations including specifically Grantee’s accounting and financial records. City acknowledges that some of the records that may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Grantee which are not required to be made public pursuant to Applicable Laws. Grantee shall produce such books and records for City’s inspection at Grantee’s corporate office located no more than seventy-five (75) miles from City Hall or at such other mutually agreed upon location within the City. To the extent it is necessary for City to send representatives to a location outside of the City to inspect Grantee’s books and records, Grantee shall be responsible for all travel costs incurred by City representatives.

6. Reports and Maps to be Filed with City.

a. Grantee shall file with the City, at the time of payment of the Franchise Fee, a report of all Gross Revenues in form and substance as Exhibit D attached hereto.

b. City and Grantee shall mutually agree, at the times and in the form prescribed, such other reasonable reports with respect to Grantee’s operations pursuant to this Franchise.

c. If required by City, Grantee shall furnish to and file with City Administrator the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities, and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.
7. **Periodic Evaluation.**

   a. City may require evaluation sessions at any time during the term of this Franchise, upon thirty (30) days written notice to Grantee.

   b. Topics that may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access Channels, facilities and support, municipal uses of cable, Subscriber rates, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City deems relevant.

   c. As part of any periodic evaluation proceeding, the City shall have the right to visit and/or inspect the Grantee’s headend facility, customer service center and any other facilities of Grantee whether or not located in the City to the extent such facilities are in any way related to Grantee’s ability to provide Cable Services to the City.

   d. As a result of a periodic review or evaluation session, upon notification from City, Grantee shall meet with City and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the Franchise, which are both economically and technically feasible as measured over the remaining life of the Franchise.

**SECTION 8   GENERAL FINANCIAL AND INSURANCE PROVISIONS**

1. **Performance Bond.**

   a. Thirty (30) days prior to initiation of any substantial System construction in excess of One Hundred Thousand and No/100 Dollars ($100,000), Grantee shall furnish and file with the City a performance and payment bond, or a performance and payment bond together with such other security as is approved by the City. The bond shall run to the City in the penal sum of not less than fifteen percent (15%) of the total construction costs to be undertaken by Grantee. The bond shall be conditioned upon the faithful performance by Grantee of all terms and conditions of the System construction. The rights reserved to the City with respect to the bond or other security are in addition to all other rights the City may have under the Franchise or any other law.

   b. Following the completion of the System construction, as determined by the City, the requirement to maintain said bond above shall be extinguished.

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

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

   a. At the time of acceptance of this Franchise, Grantee shall deliver to City an irrevocable and unconditional letter of credit, in form and substance acceptable to City, from a National or State bank approved by City, in the amount of Five Thousand and No/100 Dollars ($5,000).

   b. The letter of credit shall provide that funds will be paid to City, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this Section, in payment for any monies owed by Grantee to City or any Person pursuant to its obligations under this Franchise, or in payment for any damage incurred by City or any Person as a result of any acts or omissions by Grantee pursuant to this Franchise.

   c. In addition to recovery of any monies owed by Grantee to City or any Person or damages to City or any Person as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the letter of credit the following penalties:

      i. For failure to timely complete System construction as provided in this Franchise unless City approves the delay, the penalty shall be Two Hundred Fifty and No/100 Dollars ($250.00) per day for each day, or part thereof, such failure occurs or continues.

      ii. For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the penalty shall be One Hundred Fifty and No/100 Dollars ($150.00) per day for each day, or part thereof, such failure occurs or continues.

      iii. Fifteen (15) days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the penalty shall be Two Hundred Fifty and No/100 Dollars ($250.00) per day for each day, or part thereof, such failure occurs or continues.

      iv. For failure to provide the Services Grantee has proposed, including, but not limited to, the implementation and the utilization of the access Channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be Two Hundred Fifty and No/100 Dollars ($250.00) per day for each day, or part thereof, such failure occurs or continues.

      v. For Grantee’s breach of any written contract or agreement with or to the City or its designee, the penalty shall be Two Hundred Fifty and No/100 Dollars ($250.00) per day for each day, or part thereof, such breach occurs or continues.
vi. For failure to comply with any of the provisions of this Franchise, or other City ordinance for which a penalty is not otherwise specifically provided pursuant to this subparagraph (c), the penalty shall be One Hundred Fifty and No/100 Dollars ($150.00) per day for each day, or part thereof, such failure occurs or continues.

d. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

e. Whenever the City believes that the Grantee is in violation of one (1) or more of the material terms, conditions, or provisions of this Franchise, a written notice shall be given to the Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford the Grantee the opportunity to remedy the violation. Grantee shall have thirty (30) days subsequent receipt of written notice in which to correct the violation. Grantee shall, within ten (10) business days of receipt of written notice, notify the City if there is a dispute as to whether a violation has, in fact, occurred. Such notice by the Grantee shall specify with reasonable particularity the matters disputed and shall stay the running of the above-described time for cure.

f. The City shall hold a hearing regarding the alleged violation(s) at a regularly scheduled or specially scheduled City Council meeting with at least ten (10) days prior written notice to Grantee. The Grantee shall be afforded an opportunity to be heard and present evidence at such hearing. The City shall make a determination as to the alleged violation(s) and shall make written findings of fact relative to its determination. Grantee may appeal decision of City to court of competent jurisdiction.

g. If after hearing the dispute, the City Council finds that a violation exists, then the Grantee shall have twenty (20) days within which to cure or correct any violation before any penalty to sanction may be imposed.

h. The time for Grantee to correct any alleged violation shall be extended by the City if the necessary action to correct the alleged violation is of such a nature or character as to require more than thirty (30) days and provided Grantee commences corrective action within thirty (30) days and thereafter exercises due diligence to correct the violation.

i. If said letter of credit or any subsequent letter of credit delivered pursuant thereto expires prior to twelve (12) months after the expiration of the term of this Franchise, it shall be renewed or replaced during the term of this Franchise to provide that it will not expire earlier than twelve (12) months after the expiration of this Franchise. The renewed or replaced letter of credit shall be of the same form and with a bank authorized herein and for the full amount stated in subparagraph (a) of this section.

j. If City draws upon the letter of credit or any subsequent letter of credit delivered pursuant thereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement
letter of credit or certification of replenishment for the full amount stated in Section 8.2(a) as a substitution of the previous letter of credit. This shall be a continuing obligation for any draws upon the letter of credit.

k. If any letter of credit is not so replaced or replenished, City may draw on said letter of credit for the whole amount thereof and use the proceeds as City determines in its sole discretion. The failure to replace or replenish any letter of credit may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the letter of credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee that are in default, shall not be a waiver or release of such default.

l. The collection by City of any damages, monies or penalties from the letter of credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the letter of credit, be deemed a waiver of any right of City pursuant to this Franchise or otherwise.

3. Liability Insurance.

a. Upon the effective date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise commercial general liability insurance with a company licensed to do business in the State of Minnesota that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims that may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. Grantee shall use an insurer that has a rating by A.M. Best & Co. of not less than “A” at the time the insurance is placed or renewed. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee’s vehicles, products and operations. Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring Grantee and the City in the minimum amounts of:

i. Two Million and No/100 Dollars ($2,000,000.00) for bodily injury or death to any one (1) Person;

ii. Two Million and No/100 Dollars ($2,000,000.00) for bodily injury or death resulting from any one accident;

b. The following provisions shall be contained in the liability policy:

i. The policy shall provide coverage on an “occurrence” basis.

ii. The policy shall cover personal injury as well as bodily injury.
iii. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage.

iv. Broad form property damage liability shall be afforded.

v. City shall be named as an additional insured on the policy.

vi. An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to City.

c. Grantee shall submit to City documentation of the required insurance, including a copy of the certificate of insurance showing that the City is an additional insured, as and providing that the policy shall not be canceled without thirty (30) days notice of cancellation given to the City.

4. Indemnification

a. Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the “Indemnified Parties”) harmless from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney’s fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee’s operations, the exercise of the Franchise and/or the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee’s employees, including compliance with Social Security and withholdings. Grantee shall not be required to provide indemnification to City for programming cablecast over the PEG access Channels administered by City.

b. The indemnification obligations of Grantee set forth in this Franchise not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers’ Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise or the terms, applicability or limitations of any insurance held by Grantee.

c. City does not, and shall not, waive any rights against Grantee that it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.

d. The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee’s operations referred to in this Franchise, regardless of whether or not such
insurance policies shall have been determined to be applicable to any such damages or claims for damages.

e. Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees. City shall hold Grantee harmless, to the fullest extent allowed by law, for any damage resulting from the negligence or misconduct of the City or its officials, boards, commissions, agents, or employees in utilizing any PEG access Channels, equipment, or facilities and for any such negligence or misconduct by City in connection with work performed by City and permitted by this Franchise, on or adjacent to the Cable System.

5. Grantee’s Insurance.

Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

a. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:

i. Promptly notify Grantee in writing of any claim or legal proceeding that gives rise to such right;

ii. Afford Grantee the opportunity to participate in and fully control the defense of any claim or proceeding and any compromise, settlement or other resolution or disposition of any claim or proceeding; and

iii. Fully cooperate with reasonable requests of Grantee, at Grantee’s expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (ii) above.

SECTION 9  SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

1. City’s Right to Revoke. In addition to all other rights that City has pursuant to law or equity, City reserves the right to commence proceedings to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if it is determined by City that after notice and an opportunity to cure as reordered herein;

a. Grantee has violated material provision(s) of this Franchise and has not cured; or

b. Grantee has attempted to evade any of the provisions of the Franchise; or

c. Grantee has practiced fraud or deceit upon City.
2. **Procedures for Revocation.**

   a. City shall provide Grantee with written notice of a Franchise violation consistent with Section 8.2(e) of this Franchise and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise.

   b. Should City determine to proceed with a revocation proceeding, Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

   c. Only after the public hearing and upon written notice of the determination by City to revoke the Franchise may Grantee appeal said decision with an appropriate State or Federal court or agency.

   d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

3. **Abandonment of Service.** Grantee may not abandon the System or any portion thereof without prior written consent of the City or having first given three (3) months written notice to City. Grantee may not abandon the System or any portion thereof without compensating City for damages resulting from the abandonment, including all costs incident to removal of the System.

4. **Removal After Abandonment, Termination or Forfeiture.**

   a. In the event of termination or forfeiture of the Franchise pursuant to Section 9.2 above or abandonment of the System, City shall have the right, by written notice, to require Grantee to remove all or any portion of the System from all Rights-of-Way and public property within City.

   b. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) days after written notice of City’s demand for removal is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City’s demand for removal is given, City shall have the right to declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

5. **Sale or Transfer of Franchise.**

   a. No sale or transfer of the Franchise, or sale, transfer, or fundamental corporate change of or in Grantee, including, but not limited to, a fundamental corporate
change in Grantee’s parent corporation or any entity having a controlling interest in Grantee, the sale of a controlling interest in the Grantee’s assets, a merger including the merger of a subsidiary and parent entity, consolidation, or the creation of a subsidiary or affiliate entity, shall take place until a written request has been filed with City requesting approval of the sale, transfer, or corporate change and such approval has been granted or deemed granted; provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and/or assets to secure an indebtedness.

b. Any sale, transfer, exchange or assignment of stock in Grantee, or Grantee’s parent corporation or any other entity having a controlling interest in Grantee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 9.5. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

c. The Grantee shall, upon request of the City, provide, in addition to all documents, forms and information required to be filed by Applicable Laws, the following:

i. All non-confidential contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein, which are necessary in order to understand the terms thereof; and

ii. A list detailing all documents filed with any State or Federal agency related to the transaction including, but not limited to, the MPUC, the FCC, the FTC, the FEC, the SEC or applicable State departments and agencies. Upon request, Grantee shall provide City with a complete copy of any such document that pertain to the City.

d. City shall have such time as is permitted by Applicable Laws in which to review a transfer request.

e. The City hereby retains all its rights to seek reimbursement from the Grantee for all reasonable incidental costs associated with City’s review of any request to transfer. Nothing herein shall prevent Grantee from negotiating partial or complete payment of such costs and fees by the transferee.

f. In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to subparagraph (a) or (b) of this section be approved without any new Grantee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City including, but not limited to, any adequate guarantees or other security instruments required by this Franchise.
g. City reserves its right to purchase the System pursuant to Minn. Stat. § 238.084, subd. 1(y).

h. No Franchise may be transferred if City determines Grantee is in noncompliance of the Franchise unless an acceptable compliance program has been approved by City. The approval of any transfer of ownership pursuant to this section shall not be deemed to waive any rights of City to subsequently enforce noncompliance issues relating to this Franchise even if such issues predated the approval, whether known or unknown to City.

SECTION 10 PROTECTION OF INDIVIDUAL RIGHTS

1. Discriminatory Practices Prohibited. Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other Applicable Laws, and all executive and administrative orders relating to nondiscrimination.

2. Subscriber Privacy.

   a. No signals may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. Such written permission shall be for a limited period of time not to exceed one (1) year, which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber’s failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of activity planned for the purpose of monitoring individual viewing patterns or practices.

   b. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee’s service business use or to City for the purpose of Franchise administration, and also to the Subscriber subject of that information, unless Grantee has received specific written authorization from the Subscriber to make such data available. Such written permission shall be for a limited period of time not to exceed one (1) year, which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber’s failure to provide or renew such authorization. The authorization shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

   c. Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this section.
SECTION 11 UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive Services of the System without Grantee’s authorization.

2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

3. Penalty. Any firm, Person, group, company, or corporation found guilty of violating this section shall be subject to the fullest extent of any local, state or federal statutes pertaining to such violations.

SECTION 12 MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.

2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Upon request, Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.

3. Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City’s exercise of its police powers.

4. Compliance with Federal, State and Local Laws.

   a. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act that may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City
shall conform to state and federal laws and regulations and rules regarding cable communications as they become effective.

b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstances shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties.

5. **Nonenforcement by City.** Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

6. **Rights Cumulative.** Subject to Applicable Law, all rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

7. **Grantee Acknowledgement of Validity of Franchise.** Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and agrees to be bound by its terms and conditions.

8. **Force Majeure.** Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism, storm or other similar catastrophes; national emergencies; insurrection; riots; wars; or strikes, lockouts or work stoppages.

9. **Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

10. **Entire Agreement.** This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or
warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiation, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

SECTION 13 PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication, Effective Date. This Franchise shall be published in accordance with applicable local and state law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.

2. Acceptance.
   a. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void. This Franchise shall expire on January 10, 2021, unless extended by the mutual agreements of the parties.
   b. Grantee shall pay all costs and expenses incurred by the City in connection with the publication of this Franchise to the maximum extent permitted under Applicable Law.
   c. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.
   d. Grantee shall accept this Franchise in the following manner:
      i. This Franchise will be properly executed and acknowledged by Grantee and delivered to the City.
      ii. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates, and guaranties, as required herein, that have not previously been delivered.
EXHIBIT A. OWNERSHIP

Grantee must maintain on file with City an accurate chart outlining its complete ownership structure.
EXHIBIT B. GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS.

Initially, Grantee shall make one (1) Channel available exclusively for PEG use (“PEG Channels”). Grantee shall also make available one (1) additional Channel for PEG use (for a total of two (2) PEG Channels) upon ninety (90) days advance written notice from the City. The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Grantee may upon written request to City, utilize any PEG Channels for commercial or non-commercial programming when they are not scheduled for PEG use. City and Grantee shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

City may not request additional Channel capacity beyond the two (2) Channels for PEG use except in accordance with Applicable Laws. City shall be responsible for all programming requirements, including but not limited to scheduling, playback, training, staffing, copyright clearances, and equipment, maintenance and repair. Grantee shall in no way be responsible for any content or copyright requirements related to PEG programming.

2. PEG OPERATIONS.

City may, in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the expenses of supporting the PEG Channels. Throughout the term of this Franchise Grantee shall provide City with an audio feed of a music service to provide background sound for the City’s character generated bulletin board to be cablecast on one (1) PEG Channel.

3. RELOCATION OF PEG CHANNELS.

Grantee shall be entitled to relocate any PEG access Channel to a different Channel number. Grantee shall provide City and all Subscribers with at least sixty (60) days prior written notice of any relocation. In the event any PEG access Channel(s) is relocated, Grantee shall reimburse City up to Five Thousand and No/100 Dollars ($5,000.00) for all costs associated with such move including change of letterhead, promotion of new Channel location in the situation where the Grantee has initiated the request to relocate such Channel. Relocation costs resulting for requirements of Applicable Law changes shall be the burden of the City.

4. PEG ACCESS SUPPORT.

Grantee shall collect, on behalf of City, a per Subscriber fee of twenty-five cents (25¢) per month, solely to fund PEG capital access related expenditures (hereinafter “Access Fee”). The twenty-five cent (25¢) Access Fee shall be automatically adjusted every two (2) years during the term of this Franchise, equal to the cumulative increase in the US Consumer Price Index – All Urban Consumers as compiled by the United States Bureau
of Labor Statistics or such similar successor organization (“CPI”) during the preceding years. The first CPI increase shall occur on January 1, 2008. Any and all payments by Grantee to City in support of PEG access programming shall not be deemed “Franchise Fees” within the meaning of Section 622 of the Cable Act (47 U.S.C. Section 542).

5. SERVICE TO PUBLIC BUILDINGS.

Grantee shall provide live origination points to the Ind. School District No. 2170 and City Hall to facilitate the exchange of programming, including live cablecast programming from those buildings on the Grantee’s Cable System and the City’s network. Grantee shall further provide, free of charge, all necessary interface equipment at the agreed upon point of interconnection to allow the City to cablecast programming to Grantee’s headend for cablecast on Grantee’s Cable System.

6. DROPS TO DESIGNATED BUILDINGS

a. Grantee shall provide free of charge throughout the term of this Franchise, Installation of one (1) network Drop, one (1) cable outlet, and one (1) Converter, if necessary, and the most highly penetrated level of Cable Service offered by Grantee, excluding pay-per-view, pay-per-channel (premium) programming, high-speed data services or newly created non-video Cable Services, without charge to the institutions identified on Exhibit C attached hereto and made a part hereof, and such other accredited schools and City administrative building subsequently designated by City as determined in City’s reasonable discretion. This requirement shall not include any digital tier of Services Grantee may offer unless and until such time as Grantee’s digital programming reduces the amount of spectrum available for analog programming to less than approximately sixty (60) Channels of analog programming. Grantee shall be responsible for the costs of extension to subsequently designated institutions for the first three hundred fifty (350) feet as measured from Grantee’s nearest active plant. The institution shall pay the net additional Drop or extension costs beyond the three hundred fifty (350) feet.

b. Additional Subscriber network Drops and/or outlets in any of the locations identified on Exhibit C will be installed by Grantee at the Grantee’s usual time and material pricing. Alternatively, said institutions may add outlets at their own expense, as long as such Installation meets Grantee’s standards and approval, which shall not be unreasonably withheld. Grantee shall have three (3) months from the date of City designation of additional accredited schools or City administrative buildings or relocations to complete construction of the Drop and the outlet unless weather or other conditions beyond the control of Grantee requires more time.

c. The City shall coordinate with all franchised cable operators providing Cable Service within the City to ensure that the requirements imposed on such cable operators with respect to free Service Drops to designated buildings shall be no more favorable nor less burdensome to any one cable operator over the other and are not unduly discriminatory.
EXHIBIT C. SERVICE TO PUBLIC AND PRIVATE BUILDINGS

1. Staples Government Center
2. Northside Fire Hall
3. Community Center
4. Light Shop
5. Water Plant
6. Street Shop
7. All state accredited public and private K-12 schools.
## Exhibit D. Trade Secret Confidential

### Franchise Fee Payment Worksheet

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<th>Revenue Source</th>
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<td><strong>Total</strong></td>
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EXHIBIT E. CUSTOMER SERVICE OBLIGATIONS

47 C.F.R. §76.309 Customer Service Obligations

A. A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

B. Nothing in this rule should be construed to prevent or prohibit:

1. A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;

2. A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;

3. Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

4. The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this rule.

C. Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

1. Cable system office hours and telephone availability.

   a. The cable operator will maintain a local, toll-free or collect call telephone access line, which will be available to its subscribers 24 hours a day, seven days a week.

      i. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

      ii. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

   b. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90)
percent of the time under normal operating conditions, measured on a quarterly basis.

c. The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

d. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

e. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

2. Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

a. Standard installations will be performed within seven (7) business days after an order has been placed. “Standard” installations are those that are located up to 125 feet from the existing distribution system.

b. Excluding conditions beyond the control of the operator, the cable operator will begin working on “service interruptions” promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

c. The “appointment window” alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

d. An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

e. If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

3. Communications between cable operators and cable subscribers.

a. Refunds. Refund checks will be issued promptly, but no later than either –
i. The customer’s next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

ii. The return of the equipment supplied by the cable operator if service is terminated.

b. Credits. Credits for service will be issued no later than the customer’s next billing cycle following the determination that a credit is warranted.

4. Definitions.

a. Normal Business Hours. The term “normal business hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

b. Normal Operating Conditions. The term “normal operating conditions” means those service conditions that are within the control of the cable operator. Those conditions that are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

c. Service Interruption. The term “service interruption” means the loss of picture or sound on one or more cable channels.
Sec. 11.2.02 Gas Franchise

Subd. a. Statement of Intent and Purpose

The City Council of the City of Staples, Minnesota does ordain as follows:

That there is hereby granted to Minnesota Energy Resources Corporation (the “Grantee”), the non-exclusive right, permission, authority, power, and privilege to maintain, build, lay and operate in and along the streets, highways, and other public grounds within the City of Staples (the “City”) a system of mains, pipes, conduits, and other necessary attachments and appurtenances for the storage, conveyance, distribution, and sale of gas, either artificially manufactured or natural gas, or a mixture of the same, for light, fuel, power, heat, and all other purposes in the City and the right, permission, authority, power, and privilege to maintain, use, own, and operate those gas facilities within the corporate limits of the City as may be necessary to carry out the terms of this franchise ordinance (the “Franchise”).

Such right, authority, permission, and power is hereby granted for an initial term commencing on the effective date of the Franchise as provided in Subd. l. (the “Effective Date”) and concluding on the tenth (10th) annual anniversary of the Effective Date (the “Initial Term”). The Franchise shall continue thereafter at the will of the City. The Franchise granted hereby shall be terminable by the City, effective one (1) calendar year following the date that written notice is mailed or delivered to the Grantee; provided, however, (a) this Franchise cannot be terminated sooner than the last day of the Initial Term and (b) this Franchise may not extend for a period greater than twenty (20) years.

Subd. b. Franchise

1. The Grantee, by the acceptance of this Franchise, agrees to acquire, build, lay, maintain, and operate in and along the streets, highways, and other public grounds within the City a system of mains, pipes, conduits, and other necessary attachments and appurtenances for the storage, conveyance, distribution, and sale of gas, either artificially manufactured or natural gas, or a mixture of the same, for light fuel, power, heat, and all other purposes in the City and those facilities shall be sufficient for the supply of gas as may from time to time be reasonably needed and consumed by the City and the inhabitants hereof and that the Grantee shall furnish sufficient gas for the reasonable requirements of the City and its inhabitants, and may maintain, construct, use, own, and operate a gas works within the corporate limits of the City.

2. Nothing herein shall limit the right and power of the Grantee to sell or furnish gas to consumers outside the corporate limits of the City nor upon using of all of the Grantee’s works, mains, and equipment for such purposes, provided
that in no manner shall the City or the inhabitants hereof be discriminated against by the supplying of gas outside the City.

3. The Grantee shall not be liable to the City or its inhabitants by reason of the failure of the Grantee to install additional equipment or to deliver gas as required by this Franchise as result of Acts of God or the public enemy; inability of the Grantee’s pipeline supplier to furnish an adequate supply of gas due to an emergency, temporary or permanent, including, but without restricting it to, the securing of materials; order or decision of a public regulatory body; or other acts or conditions beyond the reasonable control of the Grantee.

4. During a period of shortage of gas resulting under Subd. b. 3., the Grantee shall have the right and authority, subject to approval of the City or such regulatory agency as may have jurisdiction thereof, which approval shall not be unreasonably withheld, to adopt reasonable rules and regulations in connection with the limiting, curtailing, or allocating extensions of service, the supplying as to any customer or prospective customer, and the withholding the supplying of gas to new customers, provided that (a) such rules and regulation shall be just and reasonable and uniform as applied to each class of Grantee’s customers, both within and outside the boundaries of the City, and (b) Grantee shall provide reasonable, advance, written notice of such actions or proposed actions, adequate in time for City to fully participate in any regulatory proceeding concerning such limitation or curtailment.

Subd. c. Operations

1. The Grantee shall not lay its gas mains and service pipes so as to interfere with or obstruct the drainage of the City, the construction of sewers or underground fixtures for the conveyance of water, or the necessary and proper use of said streets, alleys, and public places. The Grantee shall with reasonable promptness restore the surface where it makes excavations to as good a condition as before the commencement of such work, and during the progress of such work the Grantee shall be responsible for keeping streets and other places guarded in order to prevent accident to persons or property.

2. In conducting its operations under this Franchise, the Grantee shall observe all applicable federal, state, and local laws, rules, regulations, and orders, including Ordinance 470 (Right-of-Way Ordinance).

3. Grantee shall provide field locations for all of its underground facilities as required by the Gopher One-Call Excavation Notice System (Minn. Stat. §§ 216D.01 - .09).

4. The Grantee agrees that all authority and right granted by this Franchise shall at all times be subject to all right, power, and authority now or hereafter
possessed by the City or any other regulatory tribunal having jurisdiction thereover to regulate, fix, and control just, reasonable, and compensatory gas rates, and to reasonably regulate, control, and direct the manner in which the Grantee shall use the streets, alleys, right-of-way, bridges, and public places (collectively “Public Area”) in the City. In the event Grantee shall at any time change or apply to change rates, terms, or conditions of gas service, Grantee shall provide reasonable advance notice of such actions or proposed actions as in required by Minnesota Statutes § 216B.16, subd. 1 (2008).

5. City shall give Grantee at least thirty days advance written notice of a proposed vacation of a public right-of-way. Any vacation by the City of a right-of-way that contains Grantee’s facilities shall be completed in accordance with Minnesota Rules 7819.3200. In no case, however, shall City be liable to the Grantee for failure to specifically preserve a right-of-way, in the exercise of its authority under Minn. Stat. § 160.29.

6. Except as limited by the laws of the State of Minnesota, or any regulatory authority having jurisdiction thereof, the Grantee shall at all times have the right to make and promulgate such reasonable regulations and rules in respect to requiring money deposits or guarantees from persons desiring gas that it may deem necessary for its protection.

Subd. d. Extension of Service

1. Grantee agrees to extend customer service connections from the main to the consumer’s property line, at the nearest point to the main, as part of the distribution system. Grantee may charge the customer a reasonable rate per foot for installation of the service connection from the property line to the customer’s premises.

2. In accordance with the provisions of Grantee’s gas tariff, on file with the Minnesota Public Utilities Commission, Grantee shall make such reasonable extensions of its mains and pipes from time to time as are required by the terms of said tariff to serve inhabitants of the City.

Subd. e. Construction Restrictions

1. Whenever the Grantee shall desire to open, disturb, or excavate in any Public Area for the purpose of maintenance, repair or laying of gas mains or pipes, it shall give the City reasonable advance notice, but not less than two (2) business days notice thereof by filing a written notice with the City Clerk. In any case, Grantee shall not commence to excavate before obtaining an appropriate permit from the City. The Grantee shall not, during the progress of the work, endanger or unnecessarily obstruct the passage of traffic or proper use of such Public Area, and it shall, promptly and diligently, restore the Public Area to as good condition as it was before the excavations were
made; provided, however, the Grantee shall in no case interfere with any improvements, being made by the City without the consent of the City Clerk.

2. The requirements for obtaining permits from the City before any maintenance or repair of the facilities of Grantee shall not apply to routine maintenance or repairs where excavation is not required, or emergency situations when it is necessary for Grantee to act immediately to remedy a situation that jeopardizes the public health or safety. In such emergency situations, however, Grantee shall reasonably notify the City of such emergency situation and the efforts required to be taken by it to remedy such situation.

Subd. f. Relocation of Facilities

The Grantee agrees that in the event the City reasonably determines that it is necessary for the Grantee to move any part of its system of mains, pipes, conduits, and other necessary attachments and appurtenances for the storage, conveyance, distribution, and sale of gas because the City has determined to change, move, or improve its Public Area, that, upon reasonable notice by the City to the Grantee, the Grantee will move its facilities at its sole cost. The City agrees to consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause the Grantee additional expense in exercising its authority under this Subd. f..

Subd. g. Insurance and Indemnification

1. Upon the Effective Date and on each annual anniversary thereafter, the Grantee shall furnish the City a complete schedule of insurance carried by the Grantee to adequately protect the City from any and all obligations, liabilities, or claims of any nature whatsoever, growing out of the operation, construction, and maintenance of the gas plant and gas distribution system. If the City at any time reasonably determines that the insurance is inadequate, the Grantee shall add to the insurance coverage to the extent reasonably required by the City.

2. If at any time any claim of any kind is made against City for the injury to persons or property arising from the acts or failure to act of Grantee, its agents, servants, or employees in connection with the operations of the Grantee, the Grantee shall fully indemnify and hold the City harmless from any and all such claims, including, but not by way of limitation, reimbursement of any reasonable expenses the City may incur in the handling, denial, or defense of such claims, including, but not by way of limitation, reasonable attorneys’ fees and costs; provided, however, that, in case suit is instituted against the City, the City shall promptly notify the Grantee of such suit, giving the Grantee ample and reasonable time to appear and defend the same. The City shall not be indemnified for losses or claims occasioned through its own negligence or otherwise wrongful act or omission except for
losses or claims arising out of or alleging the City's negligence or otherwise wrongful act or omission as to the issuance of permits for, or inspection of Grantee’s plans or work. Grantee’s indemnification obligations shall survive the expiration, amendment, or termination of this Franchise.

3. This Subd. g. is not, as to third parties, a waiver of any defense or immunity otherwise available to City. Grantee, in defending any action on behalf of City, may assert in any action every defense or immunity that the City could assert in its own behalf.

Subd. h. Franchise Fee

1. Grantee is obligated to pay a franchise fee according to Ordinance Number 484, published December 31, 2009, which Ordinance remains in effect without change and continues to obligate Grantee so long as it remains a Gas Company as defined therein.

2. The franchise fee may be changed by ordinance from time to time. Provided, however, such changes shall not occur more often than once within any twelve (12) consecutive calendar months. Notice of the proposed change shall be given to Grantee not later than the effective date of the ordinance adopting the change.

3. If for any reason the amount or rate of the franchise fee shall be determined to be in excess of the amount or rate allowed by law, then the amount or rate shall automatically, and without further action by City, be reduced to the maximum amount or rate permitted by law.

4. If any person challenges the collection or any aspect of the franchise fee or payment made to the City pursuant to this Franchise, Grantee shall promptly provide notice of such challenge to the City and shall, in any event, continue to diligently exercise its efforts to sustain the franchise fee and payments and the time and manner of its collection.

Subd. i. Records

1. Upon request of City (which may not be made more frequently than once each calendar year), Grantee shall submit to the City the certified annual financial statement of Grantee showing the capitalization of the Grantee, profit and loss statement for the prior fiscal year and its balance sheet.

2. Upon request of City (which may not be made more frequently than once each calendar year), Grantee shall submit to City its financial statements as they relate specifically to its operations within City, including a description of the Grantee’s revenues from customers located within the City and Grantee’s facilities within the City, including the original cost thereof less accumulated depreciation. The City shall be accorded the right, during normal business
hours, to examine and copy the books and records of the Grantee that relate to Grantee’s operations in the City collected and maintained by Grantee in the ordinary course of its business. City shall pay for Grantee’s duplicating or other out of pocket costs as may be directly incurred by Grantee in complying with City’s request, if any.

3. The Grantee shall prepare and maintain a record of all complaints from customers and property owners within the City made to Grantee with respect to services and rates, and shall further record the Grantee’s response and disposition of each complaint. These records shall be available for review and copying by the City during the Grantee’s normal business hours. The Grantee further agrees to provide a summary of such records in the annual report to the City required by Subd. 1., or at Grantee’s option, upon the City’s request the Grantee will refer the City to the annual service quality filing submitted to the Minnesota Public Utilities Commission.

Subd. j. Transfer

1. Grantee shall promptly provide written notice (“Notice”) to City if the Grantee receives and proposes to accept any offer whereby Grantee will sell, assign, lease or otherwise transfer (“Transfer”) to any third party (the “Offeror”) any of the following (an “Offer”):

   (a) The Franchise, in its entirety, or any rights or obligations thereunder;

   (b) The facilities and operations utilized by Grantee in the retail sale and distribution of natural or artificially manufactured gas or a mixture of them (“Gas Facilities”) located within the City of Staples or outside of the City of Staples if such Gas Facilities are substantially devoted to the provision of service within the City and are connected with facilities located within the City of Staples, extending only to the point of interconnection with interstate gas transmission lines (“Staples Gas Facilities”);

   (c) All or substantially all of the Gas Facilities (but not including the Staples Gas Facilities) which are managed, supervised or operated by Grantee, as presently constituted and operating;

   (d) All or substantially all of the Gas Facilities (but not including the Staples Gas Facilities) located within the State of Minnesota which are owned, managed or operated by any division or subsidiary of Grantee or any other entity controlled by Grantee which hereafter succeeds to the Gas Facilities, rights and obligations of Grantee (“Grantee Successor”); or

   (e) A controlling interest in the stock or other voting or equitable ownership interest in any entity that is a Grantee Successor.
2. The Notice required by Subd. j. 1. shall set forth the following:

(a) The identity of the Offeror and the statement of the Offeror’s plans and intentions for the operation under the Franchise of the Staples Gas Facilities;

(b) Data adequate for a reasonable evaluation by City concerning the experience and capability (both financial and technical) of the Offeror in the operation of Gas Facilities;

(c) The terms of the Offer in sufficient detail so that City may reasonably evaluate the Offer in light of the options available to it as provided in Subd. j. 3., including, but not by way of limitation, all material terms essential to permit the City and the Grantee to contract for the purchase of the Staples Gas Facilities on the basis hereinafter provided.

3. Within one hundred twenty (120) days of the receipt of the Notice (the “Option Period”), City shall have the right to exercise any one of the following options:

(a) City may consent to and permit the Transfer pursuant to the Offer, conditioned solely upon the third party filing its written acceptance of the terms and conditions of this Franchise;

(b) City may deny its consent to the Transfer if the City reasonably determines in good faith that the Offeror does not have the experience or capability (financial or technical) to perform the obligations imposed on Grantee (i) as the operator of a public utility within the City and (ii) by the terms of this Franchise, in which event, the Franchise shall be deemed revoked and terminated effective on the date on which the Transfer is accomplished; or

(c) Serve notice that the City will proceed to purchase the Staples Gas Facilities pursuant to Minn. Stat. § 216B.45 or Minn. Stat. § 216B.47. Upon service of such notice, Grantee shall cease and desist from any transfer of the Staples Gas Facilities. The Franchise shall be revoked and terminated upon payment of just compensation as determined pursuant to the procedure of Minn. Stat. § 216B.45 or Minn. Stat. § 216B.47. In the event just compensation is not paid, or in the event voter ratification for purchase is denied pursuant to Minn. Stat. § 216B.46, then the Franchise shall remain in full force and effect, and Grantee may complete the Transfer pursuant to the offer.

4. Except as specifically provided in this Subd. j., the City shall be deemed to have consented to the Transfer upon the terms and conditions of the Offer as if the City had affirmatively consented to the Transfer as provided in Subd. j. 3.(a) unless it has taken the following actions:
(a) City has served the notice referred to in Section 9.3(c); or

(b) City has denied its consent to the Transfer as provided in Section 9.3(b).

5. In the event the Transfer contemplated by the Offer is not completed and accomplished by the Grantee and the Offeror pursuant to the terms and conditions stated in the Offer or is not completed and accomplished within the later of (a) one hundred twenty (120) days after the expiration of the Option Period or (b) ten business days following receipt of all regulatory approvals required by Grantee and the Offeror to effect the Transfer, any election by the City, whether to purchase, consent (whether affirmatively or by implication) or deny, shall be deemed void and, in such case, Grantee shall not be permitted to proceed with that Transfer except by resubmitting it to City subject and pursuant to all of the terms and conditions of this Subd. j..

Subd. k. Acquisition

The City shall have the right to purchase or otherwise acquire, for just compensation, the Staples Gas Facilities at any time after the granting of this Franchise. The City’s acquisition shall be governed solely by (a) Minn. Stat. §§ 216B.45; 216B.46 (2008), as in effect on the Effective Date, if acquisition proceedings are initiated by the City before the Minnesota Public Utilities Commission, and (b) Minn. Stat. Chapter 117 and §§ 216B.47; 465.01 (2008), as in effect on the Effective Date if the City initiates proceedings by right of eminent domain. If the City determines to exercise its rights under this Subd. k., City shall provide notice in writing to Grantee not less than 180 days before City’s initiation of any legal action to acquire Grantee’s plant and system.

Subd. l. Procedure

1. The Franchise shall be effective upon adoption and publication as provided by law (the “Effective Date”). The Grantee shall bear the costs of publication of this Franchise ordinance and any amendment hereto and Grantee shall make a sufficient deposit with the City Clerk to assure publication before its adoption.

2. The Grantee shall, within sixty (60) days after passage and publication of this Franchise, file with the City Clerk in writing its acceptance or rejection as provided in Subd. l. 3. thereof. If such acceptance is not filed or if a rejection is filed within said period, Grantee, by its continuing operations under the Franchise, shall be deemed to have accepted the terms and conditions of this franchise, except with respect to such particulars as it may successfully challenge under the procedures specified in Subd. l. 3.

3. A rejection of this Franchise may be made by Grantee only upon the grounds that the terms and conditions hereof exceed the lawful authority of the City under its Charter or the laws or Constitutions of the State of Minnesota or of
the United States or are otherwise unlawful and shall be submitted in writing, stating with particularity the points and authorities of law upon which Grantee relies. If the City fails to amend this Franchise or otherwise satisfy Grantee’s objections as stated in its rejection within sixty (60) days of its receipt of Grantee’s rejection, Grantee shall have the right thereafter to seek appropriate judicial or administrative relief based solely upon those provisions it has alleged are unlawful in its rejection. If Grantee fails to initiate such legal action within sixty (60) days from the expiration of the aforesaid sixty (60) day period provided for City’s amendment for cure, Grantee shall be deemed to have waived its objections and to have accepted the terms of this Franchise.

Subd. m. Default

If Grantee shall be in default in the performance of any of the material terms and conditions of this Franchise, and shall continue in default for more than thirty (30) days (or fails to initiate the cure, if the cure of the default cannot reasonably be accomplished within said 30 days) after receiving notice from the City of such default, the City may, following a public hearing thereon, elect to either cure such default and charge Grantee for the costs thereof, seek injunctive relief or terminate all rights granted under this Franchise to Grantee. The said notice of default shall be in writing, shall specify the provisions of this Ordinance and the performance of which it is claimed that Grantee is in default and the date of the public hearing required to be held, which date shall be not less than thirty (30) days nor more than sixty (60) days from the date of such notice. Such notice shall be served in the manner provided by the laws of Minnesota for the service of original notice in civil actions. Grantee at such hearing shall be afforded an opportunity to present whatever information it deems appropriate. Nothing herein shall in any way be construed to prevent a review of such City action by the appropriate Minnesota Court and/or regulatory agency, nor limit the right of City to enforce this Franchise by such equitable or legal remedies as may be provided by law.

Subd. n. General

1. This Franchise is being delivered and is intended to be performed in the State of Minnesota and shall be construed and enforced in accordance with the laws of Minnesota. The mandatory terms and conditions of the Charter of the City with respect to franchises and the acquisition of public utilities shall be deemed a part of this Franchise as it fully set forth herein. Grantee hereby agrees to submit to personal jurisdiction in the State of Minnesota and to the jurisdiction and venue of the State and Federal courts in which the City is located.

2. The Franchise granted to Grantee is not exclusive and the City shall have the right to grant such other franchises of the same or similar nature as it shall determine.
3. City reserves the right to amend this Franchise by ordinance. If the City proposes to enact any ordinance (a) that directly amends this franchise Ordinance or (b) that directly affects the operation by Grantee of the Staples Gas Facilities, and only such operations, the City shall provide notice to Grantee of such proposal not less than thirty (30) days before its final adoption.

4. Further, Grantee’s rights are subject to the rights of acquisition and eminent domain of the City (as provided in Subd. k.) and to the police power of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public, and this Franchise may be amended by City as deemed necessary or appropriate in the exercise of this power. Nothing herein bears on the question of whether particular regulations of the City adopted after the Effective Date are lawful or restricts in any way the Grantee’s right to legally challenge said regulations upon said grounds; provided, however, Grantee’s challenge to said regulations shall be subject to the procedures, terms and conditions provided in Subd. l., treating the adopting of such regulation as if it were the adoption of this Franchise and the Grantee’s challenge as if it were a rejection of this Franchise.

5. Headings are provided for convenience and are not part of the Franchise.

6. If this Franchise, having become final and operative as herein provided, shall be declared in part illegal or void, then nevertheless, the lawful provisions hereof which are separate from the unlawful provisions shall be and remain in full force and effect.

7. Ordinance 359, published June 21, 1990, and amended by Ordinance 375, published May 20, 1993, concerning an earlier franchise with Grantee’s predecessor, and Ordinance 489, published July 1, 2010, concerning an extension of the original gas franchise, are hereby superseded by the terms of this Franchise, which was published on January 6, 2011.

Sec. 11.2.03. Electrical.

Subd. a. Findings of the City Council.

1. The laws of the State of Minnesota as adopted by the Legislature (in Chapters 300 and 216B, inter alia) and as interpreted by the Courts, as well as the Charter of the City and the powers granted to Minnesota cities by the constitution of the State of Minnesota and other related legislation and decisional law, have uniformly and traditionally:

a. Afforded to Minnesota cities the right and obligation to license, franchise or permit the operation of utility services within a city as a condition and requirement of providing such services;
b. Required persons using, occupying or otherwise benefiting from the use of a city’s streets or highways or other public property for utilities services to obtain and maintain such license, permit or franchise as a city may specify;

c. Authorized a requirement for the payment of compensation to a city by the provider of electric services in the form of the imposition of a city fee to raise revenue or to defray costs accruing as a result of such operations, or both, commonly referred to as a franchise fee; and

d. Authorized Minnesota cities to own, manage and operate their own utilities, including retail electric distribution systems;

2. The City has operated its electric distribution system for many years pursuant to State law and City Charter, all to the substantial benefit of the City, its taxpayers, residents and electric customers.

3. In addition, the electric utilities operations of the City have traditionally and do currently contribute to the general welfare of the City by the provision of goods and services of substantial value and the payment of financial consideration, in each case in the manner of a franchise fee, which benefits the general fund of the City and, at the expense of the City’s electric rate payers, amortizes City’s cost of acquisition and maintenance of City rights of way and reduces costs otherwise required to be paid by the taxpayers of the City, whether or not they are electric customers of the City.

4. On the date hereof, one other public electric utility operates within the City and does so without the benefit of a license, permit or franchise from the City and without payment of any financial consideration to City in the manner of a franchise fee.

5. The application of uniform standards and requirements to all existing and future electric service providers within and throughout the City, including the imposition of franchise and franchise fee requirements, will promote the public welfare and safety, will afford all City electric utility customers and taxpayers reasonably comparable and equitable treatment by the City and will remove one measure of unfairness which may affect the ability of the City’s electric utility to fairly compete with other electric service providers.

6. Ultimately, franchise fees are paid by electric utility customers and it is conceivable that the future provision of electric services within the City may be made by arrangements as have not been historically perceived and, therefore, the City’s jurisdiction over the producer, seller, transmitter or distributor of electric energy and power and the scope of this Ordinance shall be liberally interpreted and applied to assure the benefits herein before described, the imposition of uniform franchise requirements and franchise fees throughout the City.
Subd. b. Franchise Required. Except pursuant to a franchise granted by the City, no person shall:

1. Operate a public electric utility or perform any one or more of the traditional functions of a public electric utility, including, but not by way of limitation producing, transmitting, furnishing or delivering electric energy or causing to be produced, transmitted, furnished or delivered electric energy for light, power, heat or other purposes, to or for the public or to or for any one or more persons within the corporate limits of the City, or

2. Place or maintain any permanent or semi-permanent lines, wires or fixtures in, over, upon, or under any street or public place within the corporate limits of the City for the purpose of operating a public electric utility or performing any one or more of the traditional functions of a public electric utility, including, but not by way of limitation, producing, transmitting, furnishing or delivering or causing electric energy to be produced, transmitted, furnished or delivered, or for any other purpose to or for the public or to or for any one or more persons, or

3. Interconnect or cause an interconnection between any electric transmission or distribution system, wherever located, and any building, structure or facility of any kind within the City for the purpose of delivering or causing the delivery of electric energy for the benefit of the owner, the user or occupant thereof, or

4. Receive electric energy within the City from any person not franchised by City except upon payment to City of a franchise fee, as provided in Subd. d.

A franchise shall be granted only by ordinance. Every ordinance granting a franchise shall contain all the terms and conditions of the franchise, except to the extent reserved to the Council, by this Section, any other City ordinance or by law for the public health and safety. The grantee shall bear the costs of publication of the franchise ordinance and shall make a sufficient deposit with the City Clerk to guarantee publication before the ordinance is passed.

Subd. c. Term. No exclusive or perpetual franchise or privilege shall ever be granted or created, nor shall any franchise or privilege be granted for a term of more than twenty (20) years.

Subd. d. Required Consideration. As a part of any franchise ordinance adopted, the City shall impose upon the grantee an obligation to pay or provide consideration to City, which may be less than, equivalent to or greater than the costs of City related to the recovery of the rental value of the public rights of way, the costs associated with the supervision and maintenance thereof and the costs of administration and supervision of the franchise ordinance. The franchise fee may be expressed (a) as a specified charge per kilowatt hour of electric energy transmitted, furnished, delivered, or received, which fees shall be calculated by the City Council and imposed upon each kilowatt hour of
electric energy transmitted, furnished, delivered, or received within the City or (b) as a percentage of the gross revenues or other consideration billed, charged and payable for the production, transmission, furnishing, delivery or receipt of electric energy and power or (c) in such other manner or fashion as the Council may determine. The franchise fee may be changed by ordinance from time to time; however, no change shall be adopted until at least 30 days after written notice enclosing such proposed ordinance has been served upon the grantee of a franchise by certified mail. The franchise fee may not be changed more often than once in each calendar year. If, for whatever reason, a franchise ordinance, as required by Subd. b. is not in force, a franchise fee shall nonetheless be due and payable to the City. The franchise fee, in such circumstances, shall be calculated by the City Administrator to provide to the City such financial or other consideration as would be payable to City under the terms of other franchise ordinances governing other electric service providers or, if there be none, an amount reasonably comparable to the City’s electric utility payments to the City general fund plus the fair market value of the City’s electric utility provision of goods and services to and for the benefit of the City as may be in effect from time to time.

Subd. e. Consideration Definition. For purposes of this Section, the following definitions shall apply:

1. “City”, with reference to its corporate limits, means such boundaries as they exist on the date of adoption of this Ordinance and as they may be changed by law from time to time hereafter.

2. “Person” means a natural person, any partnership, joint venture, corporation, cooperative, limited liability company or any public corporation, political subdivision or agency of the state or any other legal entity that may be created by law.

3. “Electric service provider” means a public electric utility and a person who performs any one or more of the activities described in Subd. b. of this Section and, may, as contemplated therein, be the ultimate user or consumer of the electric energy.

4. “Franchise fee” means the consideration paid or provided to City as described in Subd. d. hereof.

5. “Public electric utility” means a person now or hereafter operating, maintaining or controlling equipment or facilities for furnishing electric service at retail, regardless of the nature of the ownership of the person, and so, includes but not by way of limitation, a cooperative electric association, an investor owned utility, a municipally owned utility and any joint venture, partnership or other combination of the foregoing.
Subd. f. Effective Date. No electric service provider currently providing retail electric service within the City shall be subject to Subds. b. & d. until 150 days after September 24, 1996.

Subd. g. Severability. If any portion of this Section 11.2.03 is found to be invalid or unenforceable for any reason, the remainder of this Section 11.2.03 shall then be void and of no further effect.

Sec. 11.2.04. City Electrical Franchise.

Subd. a. Findings of the City Council.

1. In Ordinance Number 398, the City has required each Electric Service Provider to obtain and maintain a franchise with the City and to provide consideration to the general fund of the City for the rights afforded to it in the franchise.

2. The City has for many years been well served by its publicly owned electric system that has operated under the ultimate control and authority of the Council and that has contributed to the support of the City and alleviated the costs and expenses of City associated with such operations as well as the acquisition and maintenance of the public grounds and public ways.

3. In the interest of fairness, comparable treatment and the fostering of competition, (1) the City has found that it is necessary and desirable to formalize its rules and regulations as applied to the City’s electric utility and to implement the terms of Ordinance Number 398 with respect to the City’s electric utility and (2) the City finds that to the extent feasible and practicable similar rules and regulations should be applied to Minnesota Power and to thus implement Ordinance Number 398 with respect thereto.

4. This Franchise shall be effective immediately upon its passage and publication according to law, said publication date being June 11, 2009, and as amended herein by Ordinance 483, said publication date being December 17, 2009.

Subd. b. Definitions.

1. In this Ordinance “City” means the City of Staples, Counties of Todd and Wadena, State of Minnesota and the corporate limits thereof on the Effective Date and as they may be adjusted, decreased or increased from time to time hereafter.

2. “Minnesota Power” means Minnesota Power, an Operating Division of Allete, Inc..

3. “Minnesota Power Service Area” means those areas within City to which Minnesota Power has been assigned the right to provide electric service by the MPUC, as in effect on the date hereof or as may be hereafter revised.
4. “Council” means the City Council of the City of Staples as from time to time constituted.

5. “Department” means the agency of the City that produces or purchases, transmits and delivers electric energy and power.

6. “Effective Date” means the effective date of Ordinance No. 481, that is, upon adoption and publication, as provided by law.

7. “Electric Facilities” means electric transmission and distribution towers, poles, lines, guys, anchors, ducts, fixtures, and necessary appurtenances owned or operated by the Minnesota Power for the purpose of providing electric energy for public use.

8. “Franchise” means the grant of rights made by City to Minnesota Power in Ordinance No. 481, subject to its terms and conditions.

9. “Gross Revenues” means all revenues received by Minnesota Power from retail customers of Minnesota Power who purchase or receive electric power and energy from or through the Electric Facilities or the services of Minnesota Power and that arise from or are related to the provision of electric service. The term includes revenues of all kinds and types, including by way of illustration, and not by way of limitation, revenues derived from rates charged for electric energy (kilowatt hours) and power (kilowatts), the delivery or distribution thereof, interest or other charges assessed or for the late payment of amounts owed to Minnesota Power, extension charges and fees, and any customer service charge or cost imposed by Minnesota Power for the sale or delivery of electricity or related goods and services and any other customer charge or fee whether imposed on a single occasion or periodically. Gross Revenues for purposes of calculating the franchise fee imposed by Subd. k., shall be subject to adjustment only as specifically provided in Subd. k. I. and 2.

10. “MPUC” refers to the Minnesota Public Utility Commission or any successor regulatory agency.

11. “Person” means a natural person, any partnership, joint venture, corporation, rural electrical cooperative, limited liability company or any public corporation, political subdivision or agency of the State or any other legal entity that may be created by law.

12. “Public grounds” means all real property owned by or dedicated to the City with respect to which City holds the legal right or title to grant or withhold easement, leasehold or occupancy rights or servitudes.
13. “Public Ways” means streets, avenues, alleys, parkways, walkways, and other public rights of way within the City.

Subd. c. The Franchise.

1. City hereby confirms, grants, permits, licenses and conveys to Minnesota Power the following rights and privileges solely exercisable by Minnesota Power within the Minnesota Power Service Area:

a. The right and privilege to operate and maintain a public electric utility; and

b. The right to occupy and utilize the public ways and public grounds of City for the purpose of enlarging, extending, operating, repairing, and maintaining, in, on, over, under, and across the same, all of Minnesota Power’s Electric Facilities that are necessary or customary in accordance with sound utility practices for the purpose of the furnishing or the distribution of electricity, for public and private use; subject, however, to the provisions of Ordinance No. 481, zoning ordinances, other applicable ordinances, permit procedures and customary and necessary City practices.

2. Subject to subd. m., the initial term of the Franchise shall commence on the Effective Date and shall terminate on the day before the fifth (5th) annual anniversary of the Effective Date (the “Initial Term”). Thereafter, the Franchise shall continue from year to year at the pleasure of City but shall be terminated by City only upon ninety (90) days prior notice to Minnesota Power, effective upon the annual anniversary of the Effective Date. Provided, however, this Franchise Ordinance shall expire in all events not later than the day before the tenth (10th) annual anniversary of the Effective Date. Provided further, however, that as to any portion of the Minnesota Power Service Area transferred to the City pursuant to the Settlement Agreement dated August 7, 2008, the Franchise shall not apply to such portion transferred to the City.

3. This Franchise is not an exclusive franchise.

Subd. d. Extension of Service.

Minnesota Power shall provide such reasonable extensions of its Electric Facilities from time to time as are required to serve customers within the Minnesota Power Service Area pursuant to Minnesota Power’s Extension Rules. Minnesota Power shall (a) provide a copy of the Extension Rules to City, (b) provide a copy of the Extension Rules to any prospective customers in the Minnesota Power Service Area, and (c) give notice to the City and the public of any proposal by Minnesota Power to change such Extension Rules.
Minnesota Power shall apply any tariff or fee under the Extension Rules in a reasonable and liberal fashion so as to promote and maximize commerce and development within the Minnesota Power Service Area, to the full extent permitted by law. In the event Minnesota Power proposes any charge for such extensions (sometimes referred to as aids to construction) that exceeds the sum of One Thousand Dollars ($1,000) or in the event Minnesota Power proposes to refuse to provide such extension, notice of said proposed charge or refusal shall be promptly provided to City.

Subd. e. Construction Restrictions.

1. Whenever Minnesota Power desires to open or disturb any of the public ways or public grounds for the purpose of construction, maintenance or repair of Electric Facilities, it shall give the City reasonable advance notice but not less than ten (10) business days by filing a written notice with the City Clerk. In any case, Minnesota Power shall not commence such work before obtaining a permit or other appropriate written consent from City. Minnesota Power shall not, during the progress of the work, endanger or unnecessarily obstruct the passage of traffic or the normal and customary use of the public ways or public grounds, and it shall, promptly and diligently, restore said properties to as good condition as it was before the excavations were made. During the progress of such work, Minnesota Power shall keep the public ways or public grounds affected guarded in order to avoid accidents to persons or property. If Minnesota Power fails to promptly restore the premises disturbed within ten (10) days of notice by City, the City may engage an independent contractor at the expense of Minnesota Power and upon City’s demand it shall pay such expense to City including City’s administrative expense and overhead, plus ten percent (10%) as reasonable liquidated damages.

2. The requirements for obtaining permits from the City prior to any maintenance or repair of any of the Electric Facilities of Minnesota Power shall not apply to emergency situations where it is necessary for Minnesota Power to act immediately to remedy a situation that jeopardizes the public health or safety. In such emergency situations, however, Minnesota Power shall as soon as practicable notify the City of such emergency situation and the efforts taken by it to remedy such situation and file its request for a permit not later than the second (2nd) business day thereafter.

3. Minnesota Power shall provide field locations for all its underground facilities when requested by City within a reasonable period of time. The period of time will be deemed reasonable if it meets the requirements of the one call excavation notice system as now provided in Minnesota Statutes, Chapter 216D.

4. Before Minnesota Power constructs within the City any new transmission tower or lines or any new substation for the transformation of electricity, Minnesota Power shall first obtain the approval of the structure and the location thereof from the City. Such approval of the City shall not be reasonably withheld.
5. All poles, wires and other appliances in the Minnesota Power Service Area shall be constructed and maintained by Minnesota Power in as safe and secure a manner as reasonably possible; in such a manner so as to not unnecessarily interfere with the public use of said streets, alleys, highways, and public grounds; and subject to reasonable regulation by the City.

6. The City will give Minnesota Power reasonable advance notice of plans for improvement to streets, alleys, highways, or public grounds of the City in the Minnesota Power Service Area where City has reason to believe that Minnesota Power’s facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the streets, alleys, highways, and public grounds of the City upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) the order in which the work is to proceed.

Subd. f. Relocating.

1. In the event the City reasonably determines that it is necessary for Minnesota Power to move any part of its Electric Facilities because the City has determined to change, move or improve its public ways or public grounds, upon reasonable notice by the City to Minnesota Power, Minnesota Power will move its facilities at its sole cost. City shall consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause the Minnesota Power unreasonable additional expense in exercising its authority under this Subd. f. 1. This Subd. f. 1. does not compel a waiver by nor constitute a taking by City of any written grant of easement to Minnesota Power or any prescriptive rights acquired by Minnesota Power as provided by law byway of adverse possession independent of and without reliance by Minnesota Power on this Franchise.

2. Nothing contained herein shall relieve any third party from liability arising out of their failure to exercise reasonable care to avoid injuring Minnesota Power’s facilities while performing any work connected with grading, regrading or changing the line of any public way or with any construction on or adjacent to any public way. Provided, however, this Subd. f. 2. shall not limit City’s rights to indemnification under Subd. g. 1. nor shall City in any way be liable to Minnesota Power for claims arising from the negligence of any third party.

Subd. g. Indemnification and Insurance.

1. If at any time any claim of any kind is made against City for injury to persons or property arising from the acts or failure to act of Minnesota Power, its agents, servants, or employees in connection with the operations of Minnesota Power under and pursuant to this Franchise, Minnesota Power shall fully indemnify, defend and hold harmless the City, its agents, servants or employees from any and all such claims, including, but not by way of limitation, reasonable attorneys fees and costs. Minnesota Power’s obligation to indemnify City shall not extend to
any injury to persons or property caused by the negligent act or failure to act of City or any actions of Minnesota Power taken pursuant to directions of City if performed within the scope of City’s directions without negligence by Minnesota Power. The City shall determine who will defend any such claims arising under this Subd. g. 1. and will thereafter have complete control of such litigation. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to City; and City, in defending any action shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf. Minnesota Power’s obligations under this Subd. g. 1. shall survive the expiration, amendment or termination of Ordinance No. 481.

2. Before the effective date, Minnesota Power shall furnish City a summary of insurance, if any, carried by Minnesota Power, or of its self insured status, in either case, demonstrating adequate protection to the City from any and all obligations, liabilities, or claims of any nature whatsoever, growing out of the operation, construction, and maintenance of its Electric Facilities within the City. Minnesota Power shall maintain such insurance coverage.

3. In its operations under Ordinance No. 481, Minnesota Power shall observe all Federal, State and local laws, rules, regulations and orders with respect to the transmission, distribution, transformation or furnishing of electric energy and the handling of all materials, substances and wastes deemed toxic or hazardous to health, natural resources or the environment pursuant thereto (“Hazardous Substances”). Minnesota Power shall remove or remediate any Hazardous Substances located on, in or surrounding its Electric Facilities or caused by Minnesota Power to be located on, in or surrounding the public ways and public grounds or elsewhere within the City in compliance with all applicable laws, regulations and lawful governmental orders, and pay or cause to be paid all costs associated therewith. The indemnification terms and conditions of Subd. g. 1. shall apply to all claims made against City by any person including any governmental agency who or which asserts any right to costs, damages or other relief based upon the terms and conditions imposed upon Minnesota Power under this Subd. g. 3. or which arise from or are related to Minnesota Power’s acts or failure to act in compliance with any law, rule, regulation or lawful order governing Hazardous Substances.


The Council shall consult with Minnesota Power at least two weeks prior to its action on any proposed vacation of a public way. Except where ordered pursuant to Subd. f. 1., the vacation of any public way, after the installation of Electric Facilities, shall not operate to deprive Minnesota Power 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 Minnesota Power. In no case, however, shall City be liable to the Minnesota Power for failure to specifically preserve a right-of-way, in the exercise of its authority under Minn. Stat. § 160.29.
Subd. i. Reports and Records.

1. Minnesota Power shall file annually with the Clerk, not later than four (4) calendar months after the close of each calendar year of Minnesota Power the certified annual financial statements of Minnesota Power and a statement showing gross revenues from customers within the Minnesota Power Service Area. Upon written request of City, Minnesota Power shall submit to City an unaudited financial statement of its operations within the Minnesota Power Service Area, including revenues from customers located within the City, expenses of services thereof and a statement Minnesota Power’s Electric Facilities within the Minnesota Power Service Area, including the original cost thereof less accumulated depreciation. The latter, unaudited financial data may be based on reasonable estimates of Minnesota Power if and to the extent such City-specific data are not reasonably accessible to Minnesota Power.

2. City shall be accorded the right, during normal business hours, to examine and copy the books and records of Minnesota Power, which relate to Minnesota Power’s operations in the City, or upon City’s request in writing to provide such information relating to Minnesota Power’s operations in the City, and which is collected and maintained by Minnesota Power in the ordinary course of its business, as City may reasonable designate, provided, City shall pay for Minnesota Power’s duplicating or other out-of-pocket costs as may be directly incurred by Minnesota Power in complying with City’s request, if any.

3. Minnesota Power shall maintain a record of all complaints from customers and property owners within the City that are submitted in writing to Minnesota Power with respect to services and rates, and shall further record Minnesota Power’s response and disposition of each complaint. These records shall be available for review and copying during Minnesota Power’s normal business hours. Minnesota Power shall provide a summary of such records in the annual report to the City as required by Subd. i. 1..

Subd. j. Rates and Service.

1. The electric service provided and the rates charged by Minnesota Power for electric service, at the date hereof, are subject to the jurisdiction of the MPUC as provided in Minnesota Statutes, Chapter 216B. In particular, every rate made, demanded or received by Minnesota Power for providing electric service to a customer within the City shall be just and reasonable, shall not be unreasonably prejudicial or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of customers. The rate charged by Minnesota Power to
customers within the City shall be nondiscriminatory in relation to the rate charged to customers outside the City.

2. In the event Minnesota Power shall determine at any time after the Effective Date to change its rates or terms and conditions of electric service, Minnesota Power shall provide reasonable advance public notice of such proposed action, as required by Minnesota law, to City.

Subd. k. Franchise Fee.

1. As a condition of this Franchise hereby granted, City imposes on Minnesota Power the obligation to pay a franchise fee to City. The initial franchise fee shall be an amount equal to five (5%) percent of that portion of Minnesota Power’s annual Gross Revenues arising from its operations within the Minnesota Power Service Area. For purposes of computing Minnesota Power’s Gross Revenues, there shall be imputed and added: (i) the value of power and energy not sold or provided by Minnesota Power but distributed to a customer on any portion of Minnesota Power’s Electric Facilities, calculated at the cost that would have been paid to Minnesota Power or incurred in favor of Minnesota Power for the power and energy used by that customer if such power and energy had been sold or provided by Minnesota Power at the time under consideration and (ii) the value of the distribution of power and energy sold and provided by Minnesota Power but not distributed on Minnesota Power’s Electric Facilities calculated at the cost that would have been paid to Minnesota Power or incurred in favor of Minnesota Power for distribution services rendered to the customer if such power and energy had been distributed on Minnesota Power’s Electric Facilities.

2. The franchise fee shall be paid by Minnesota Power to City not less often than monthly, and shall be based on complete billing months during the period for which the payment is due. The fee may be changed by ordinance from time to time. Provided, however, such changes shall not occur more often than once within any twelve (12) consecutive calendar months and shall be effective not sooner than the first day of the first calendar month that follows the effective date of the ordinance adopting the change by not less than sixty (60) days. Notice of the proposed change shall be given to Minnesota Power not later than the effective date of the ordinance adopting the change. Minnesota Power may, in its sole discretion, impose a surcharge equivalent to the franchise fee in its rates for electric service. Minnesota Power shall pay the City the franchise fee based upon the rate then prevailing under Subd. k. 1. and as billed to the customer, but subject to subsequent adjustment in either of the following events: (i) if any amount so billed subsequently becomes uncollectible after reasonable efforts of collection by Minnesota Power or (ii) if Minnesota Power shall, after any of said billings, retroactively reduce its rates or costs to its retail electric customers so that a refund is due from Minnesota Power of an amount previously paid or incurred by the electric retail customers. For purposes of calculating the franchise fee, no other adjustment may be made to Gross Revenues, regardless of how calculated.
or described and whether or not characterized as a rebate, dividend, patronage, refund or return of a capital or ownership interest. The first payment due under this Subd. k. shall be paid to City with respect to Gross Revenues accrued starting December 1, 2009.

3. If for any reason the amount or rate of the franchise shall be determined to be in excess of the amount or rate allowed by law, then the amount or rate shall automatically, and without further action by City, be reduced to the maximum amount or rate permitted by law.

Subd. 1. Franchise Assignment or Transfer.

1. Minnesota Power shall promptly provide written notice ("Notice") to City if Minnesota Power receives and proposes to accept any offer whereby Minnesota Power would sell, assign, lease or otherwise transfer whether by outright sale, gift, pledge and foreclosure, merger, consolidation, reorganization or in any other manner transfer or cause the transfer ("Transfer") to any third party (the "Offeror") any of the following (an "Offer"): 

a. The Franchise, in its entirety, or any rights or obligations thereunder;

b. The Electric Facilities and operations utilized by Minnesota Power in the retail sale and distribution of electricity within the Minnesota Power Service Area or outside of City if such Electric Facilities are substantially devoted to the provision of service with the City and are connected with facilities located within the City, extending only to the point of interconnection with interstate electric transmission lines;

c. All or substantially all of the Electric Facilities located within the State of Minnesota that are owned, managed or operated by Minnesota Power or any other entity controlled by Minnesota Power that hereafter succeeds to the Electric Facilities, rights or obligations of Minnesota Power ("Minnesota Power Successor"); or

d. A controlling interest in the voting or equitable ownership interest in any entity that is a Minnesota Power Successor.

2. The Notice required in Subd. 1. 1. shall set forth the following:

a. The identity of the Offeror and the statement of the Offeror’s plans and intentions for the operation under the Franchise of the Electric Facilities;

b. Data adequate for a reasonable evaluation by City concerning the experience and capability (both financial and technical) of the Offeror in the operation of Electric Facilities;
c. The terms of the Offer in sufficient detail so that City may reasonably evaluate the Offer in light of the options available to it as provided in Subd. k. 3., including, but not by way of limitation, all material terms essential to permit the City and the Minnesota Power to contract for the purchase of the Electric Facilities on the basis hereinafter provided.

3. Within one hundred twenty (120) days of the receipt of the Notice (the “Option Period”), City shall have the right to exercise any one of the following options:

   a. City may consent to and permit the Transfer pursuant to the Offer, conditioned solely upon the third party filing its written acceptance of the terms and conditions of this Franchise;

   b. City may deny its consent to the Transfer if the City reasonably determines in good faith that the Offeror does not have the experience or capability (financial or technical) to perform the obligations imposed on Minnesota Power (i) as the operator of a public utility within the City and (ii) by the terms of this Franchise, in which event, the Franchise shall be deemed revoked and terminated effective one hundred and eighty (180) days following notice thereof by City; or

   c. Elect whether or not to purchase or otherwise acquire the Electric Facilities as provided by Minnesota law.

4. Except as specifically provided in this Subd. l., the City shall be deemed to have consented to the Transfer upon the terms and conditions of the Offer as if the City had affirmatively consented to the Transfer as provided in Subd. l. 3. a. unless within the Option Period it has taken the following actions:

   a. City has commenced the purchase or acquisition proceedings referred to in Subd. l. 3. c.; or

   b. City has denied its consent to the Transfer as provided in Subd. l. 3. b.

5. In the event the Transfer contemplated by the Offer is not completed and accomplished by Minnesota Power and the Offeror pursuant to the terms and conditions stated in the Offer or is not completed and accomplished within the later of (a) one hundred twenty (120) days after the expiration of the Option Period or (b) ten business days following receipt of all regulatory approvals required by Minnesota Power and the Offeror to effect the Transfer, any election by the City, whether to purchase, consent (whether affirmatively or by implication) or deny, shall be deemed void and, in such case, Minnesota Power shall not be permitted to proceed with that Transfer except by resubmitting it to City subject and pursuant to all of the terms and conditions of this Subd. l.

**Subd. m. City Acquisition Rights.**
Notwithstanding any provision of this Franchise, subject to the Settlement Agreement dated August 7, 2008 between the City and Minnesota Power, the City shall have the right to purchase or otherwise acquire Minnesota Power’s Electric Facilities or Minnesota Power Service Area, or portion(s) thereof, at any time by way of eminent domain under Minnesota Statutes, Chapter 117 or by proceedings under Minnesota Statutes, Chapter 216B, in either case, as such statutes or amendments to such are in effect on the date the City commences such purchase or acquisition. In that event, the pleading commencing the acquisition proceeding by City shall be noticed to Minnesota Power for it to make any adjustments to its long-range planning for facilities and service for the area affected by the proceeding. Any damages to Minnesota Power as a result of such proceeding shall be determined as of the commencement of such proceeding. Minnesota Power shall continue to operate Electric Facilities at City’s sufferance only until such acquisition is completed. The expiration or termination of this Franchise as hereinbefore provided shall not, by itself, be an independent basis of any claim by Minnesota Power against City.


Ordinance No. 481 shall not be deemed to address the City’s public water utility services or any duties of Minnesota Power with respect to said services. The City will provide Minnesota Power reasonable advance notice, as provided to City customers, of City’s plans to extend or change its sewer or water services within the Minnesota Power Service Area.

Subd. o. Street Lights, Other Facilities.

1. Subject to such procedures, regulation and supervision as the Council may establish, Minnesota Power shall trim all trees and shrubs in the public ways of the City located within the Minnesota Power Service Area interfering with the proper construction, operation, repair and maintenance of any Minnesota Power Electric Facilities installed or maintained hereunder.

2. Street name signs, “no parking” signs and other traffic control signs, as requested and provided by City, may be installed on the electric and street light poles within the Minnesota Power Service Area. No rental fee or other charge shall be payable by City for this use. The installation or placement of said signs shall comply with the National Electric Safety Code.

Subd. p. Effective Date, Publication.

1. The Franchise shall be effective upon adoption and publication as provided by law. Minnesota Power shall bear the costs of publication of this Franchise ordinance and any amendment hereto and Minnesota Power shall make a sufficient deposit with the City Clerk to assure publication prior to its adoption.
2. The Minnesota Power shall, within twenty (20) days after passage and publication of this Franchise, file with the City Clerk in writing its acceptance or rejection as provided in Subd. p. 3. thereof. If such acceptance is not filed or if a rejection is filed within said period, Minnesota Power, by its continuing operations under the Franchise, shall be deemed to have accepted the terms and conditions of this Franchise, except with respect to such particulars as it may successfully challenge under the procedures specified in Subd. p. 3.

3. A rejection of this Franchise may be made by Minnesota Power only upon the grounds that the terms and conditions hereof exceed the lawful authority of the City under its Charter or the laws or Constitutions of the State of Minnesota or of the United States or are otherwise unlawful and shall be submitted in writing, stating with particularity the points and authorities of law upon which Minnesota Power relies. If the City fails to amend this Franchise or otherwise satisfy Minnesota Power’s objections as stated in its rejection within twenty (20) days of its receipt of Minnesota Power’s rejection, Minnesota Power shall have the right thereafter to seek appropriate judicial or administrative relief based solely upon those provisions it has alleged are unlawful in its rejection. If Minnesota Power fails to initiate such legal action within twenty (20) days from the expiration of the aforesaid twenty (20) day period provided for City’s amendment or cure, Minnesota Power shall be deemed to have waived its objections and to have accepted the terms of this Franchise.

Subd. q. Right of Repeal.

If this Franchise, having become final and operative as herein provided, shall be declared in any part illegal or void, then the City, in its sole discretion, may repeal the entire or any portion of Ordinance No. 481. If any material portion of Ordinance No. 481 is declared void or illegal, then Ordinance No. 481 shall be void in its entirety.

Subd. r. Defaults.

If Minnesota Power shall be in default in the performance of any of the material terms and conditions of Ordinance No. 481, and shall continue in default for more than thirty (30) days (or fails to initiate the cure of the default within said period and diligently pursue said cure, if the cure of the default cannot reasonably be accomplished within said 30 days) after receiving notice from the City of such default, the City may elect to cure such default and charge Minnesota Power for the costs thereof. In the event of repeated or protracted violations of the Ordinance involving payments due to City, City may also require Minnesota Power to file a bond or letter of credit with the Clerk, against which City may draw to assure prompt payment of amounts due by Minnesota Power to City under Ordinance No. 481.

Subd. s. Construction, Jurisdiction and Venue.
This Franchise is granted and is intended to be performed in the State of Minnesota and shall be construed and enforced in accordance with the laws of Minnesota. Minnesota Power shall be subject to personal jurisdiction in the State of Minnesota. All actions related to Ordinance No. 481 or its enforcement shall be venued in the District Courts of the State of Minnesota within which venue City is located.

Subd. t. Amendments.

City reserves the right to amend this Franchise by ordinance to provide for the assessment of other reasonable fees or costs against Minnesota Power for the purpose of revenue enhancement or in consideration of the rights and privileges granted herein (including but not limited to Minnesota Power’s use of the City’s streets, rights of way and public easements) or the City’s performance of supervisory and monitoring functions with respect to the activities of the Minnesota Power. Minnesota Power’s rights are subject to the police power of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public, and this Franchise may be amended by City as deemed necessary or appropriate in the exercise of this power. If the City proposes to enact any ordinance (a) which directly amends this Franchise Ordinance or (b) which directly affects the operation by Minnesota Power of the Electric Facilities, and only such operations, the City shall provide public notice of such proposal not less than sixty (60) days prior to its final adoption.

Subd. u.

All ordinances or parts of ordinances affecting Minnesota Power in conflict herewith are hereby repealed. Ordinance No. 481 shall not grant any rights or privileges of enforcement to any person as a member of the public or to any governmental agency other than City.

Sec. 11.2.05. Electrical Public Utilities Franchises to Todd-Wadena Electric Cooperative.

Subd. a. Findings of the City Council.

1. In Ordinance Number 398, the City has required each Electric Service Provider to obtain and maintain a franchise with the City and to provide consideration to the general fund of the City for the rights afforded to it in the franchise.

2. The City has for many years been well served by its publicly owned electric system that has operated under the ultimate control and authority of the Council and that has contributed to the support of the City and alleviated the costs and expenses of City associated with such operations as well as the acquisition and maintenance of the public grounds and public ways.

3. In the interest of fairness, comparable treatment and the fostering of competition, (1) the City has found that it is necessary and desirable to formalize its rules and
regulations as applied to the City’s electric utility and to implement the terms of Ordinance Number 398 with respect to the City’s electric utility and (2) the City finds that to the extent feasible and practicable similar rules and regulations should be applied to the Todd-Wadena Electric Cooperative and to thus implement Ordinance Number 398 with respect thereto.

4. This Franchise is effective as of the Effective Date provided herein. It does not amend any earlier Franchise with the Cooperative.

**Subd. b. Definitions.**

1. In this Section “City” means the City of Staples, Counties of Todd and Wadena, State of Minnesota and the corporate limits thereof on the Effective Date and as they may be adjusted, decreased or increased from time to time hereafter.


3. “Cooperative Service Area” means those areas within City to which Cooperative has been assigned the right to provide electric service by the MPUC, as in effect on the date hereof or as may be hereafter revised.

4. “Council” means the City Council of the City of Staples as from time to time constituted.

5. “Department” means the agency of the City that produces or purchases, transmits and delivers electric energy and power.

6. “Effective Date” means the effective date of this Section, that is, upon adoption and publication, as provided by law.

7. “Electric Facilities” means electric distribution towers, poles, lines, guys, anchors, ducts, fixtures, and necessary appurtenances owned or operated by the Cooperative for the purpose of providing electric energy for public use.

8. “Franchise” means the grant of rights made by City to Cooperative in this Section, subject to its terms and conditions.

9. “Gross Revenues” means all revenues received by Cooperative from retail customers of Cooperative who purchase or receive electric power and energy from or through the Electric Facilities or the services of Cooperative and that arise from or are related to the provision of electric service. The term includes revenues derived from rates charged for electric energy (kilowatt hours) and power (kilowatts), the delivery or distribution thereof, and any customer service charge or cost imposed by Cooperative for the sale or delivery of electricity whether imposed on a single occasion or periodically. Gross Revenues for

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purposes of calculating the franchise fee imposed by Subd. j shall be subject to adjustment only as specifically provided in Subd. j. 1. and j. 2..

10. “MPUC” refers to the Minnesota Public Utility Commission or any successor regulatory agency.

11. “Person” means a natural person, any partnership, joint venture, corporation, cooperative, limited liability company or any public corporation, political subdivision or agency of the State or any other legal entity that may be created by law.

12. “Public grounds” means all real property owned by or dedicated to the City with respect to which City holds the legal right or title to grant or withhold easement, leasehold or occupancy rights or servitudes.

13. “Public ways” means streets, avenues, alleys, parkways, walkways, and other public rights of way within the City.

**Subd. c. The Franchise.**

1. City hereby confirms, grants, permits, licenses and conveys to Cooperative the following rights and privileges solely exercisable by Cooperative within the Cooperative Service Area:

   a. The right and privilege to operate and maintain a public electric utility; and

   b. The right to occupy and utilize the public ways and public grounds of City for the purpose of enlarging, extending, operating, repairing, and maintaining, in, on, over, under, and across the same, all of Cooperative’s Electric Facilities that are necessary or customary in accordance with sound utility practices for the purpose of the furnishing or the distribution of electricity, for public and private use;

subject, however, to the provisions of this Section, zoning ordinances, other applicable ordinances, permit procedures and customary and necessary City practices.

2. Subject to Subd. 1, the term of the Franchise shall be from the Effective Date to the day prior to the second (2nd) annual anniversary of the Effective Date. The Franchise shall thereafter continue unless notice of termination is provided by either the City or the Cooperative with sixty (60) days advance written notice.

3. This Franchise is not an exclusive franchise.

**Subd. d. Extension of Service.**
Cooperative shall provide such reasonable extensions of its Electric Facilities from time to time as are required to serve customers within the Cooperative Service Area. If such extensions are governed by any Cooperative tariff or policy, Cooperative shall (a) provide a copy thereof to City and (b) give notice to the City and the public of any proposal by Cooperative to change such tariff or policy. Cooperative shall apply any such tariff in a reasonable and liberal fashion so as to promote and maximize commerce and development within the Cooperative Service Area, to the full extent permitted by law.

Subd. e. Construction Restrictions.

1. Whenever the Cooperative desires to open or disturb any of the public ways or public grounds for the purpose of construction, maintenance or repair of Electric Facilities, it shall give the City reasonable advance notice, but not less than ten (10) business days by filing a written notice with the City Clerk. In any case, Cooperative shall not commence such work before obtaining a permit or other appropriate written consent from City. The Cooperative shall not, during the progress of the work, endanger or unnecessarily obstruct the passage of traffic or the normal and customary use of the public ways or public grounds, and it shall, promptly and diligently, restore said properties to as good condition as it was before the excavations were made. During the progress of such work, Cooperative shall keep the public ways or public grounds affected guarded in order to avoid accidents to persons or property. If Cooperative fails to promptly restore the premises disturbed within ten (10) days of notice by City, the City may engage an independent contractor at the expense of Cooperative and upon City’s demand it shall pay such expense to City including City’s administrative expense and overhead, plus ten percent (10%) as reasonable liquidated damages.

2. The requirements for obtaining permits from the City prior to any maintenance or repair of any of the Electric Facilities of Cooperative shall not apply to emergency situations where it is necessary for Cooperative to act immediately to remedy a situation that jeopardizes the public health or safety. In such emergency situations, however, Cooperative shall as soon as practicable notify the City of such emergency situation and the efforts taken by it to remedy such situation and file its request for permit not later than the second (2nd) business day thereafter.

3. Cooperative shall provide field locations for all its underground facilities when requested by City within a reasonable period of time. The period of time will be deemed reasonable if it meets the requirements of the one call excavation notice system as now provided in Minnesota Statutes, Chapter 216D.

4. Before Cooperative constructs within the City any new transmission tower or lines or any new substation for the transformation of electricity, Cooperative shall first obtain the approval of the structure and the location thereof from the City. Such approval by City shall not be unreasonably withheld.
5. If the Cooperative’s facilities are present in any of the public ways or public grounds that City desires to open or disturb, for the purpose of maintenance, construction or repair, City shall provide reasonable advance notice to Cooperative. The notice shall be deemed reasonable if it meets the requirements of the one call excavation system as now provided for in Minnesota Statutes, Chapter 216D.

**Subd. f. Relocating.**

1. In the event the City reasonably determines that it is necessary for Cooperative to move any part of its Electric Facilities because the City has determined to change, move or improve its public ways or public grounds, upon reasonable notice by the City to Cooperative, Cooperative will move its facilities at its sole cost. If City determines that it is necessary for Cooperative to move any of its Electric Facilities located within an easement granted to Cooperative on private property, Cooperative will move said Electric Facilities at City’s cost. City shall consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause Cooperative unreasonable additional expense in exercising its authority under this Subd. f. 1. This Subd. f. 1. does not compel a waiver by nor constitute a taking by City of any written grant of easement to Cooperative or any prescriptive rights acquired by Cooperative as provided by law by way of adverse possession independent of and without reliance by Cooperative on this Franchise or any prior franchise adopted by City.

2. Nothing contained herein shall relieve any third party from liability arising out of their failure to exercise reasonable care to avoid injuring Cooperative’s facilities while performing any work connected with grading, regrading or changing the line of any public way or with any construction on or adjacent to any public way. Provided, however, this Subd. f. 2. shall not limit City’s rights to indemnification under Subd. g. 1. nor shall City in any way be liable to Cooperative for claims arising from the negligence of any third party.

**Subd. g. Indemnification and Insurance.**

1. If at any time any claim of any kind is made against City for injury to persons or property arising from the acts or failure to act of Cooperative, its agents, servants, or employees in connection with the operations of the Cooperative under and pursuant to this Franchise, Cooperative shall fully indemnify, defend and hold harmless the City, its agents, servants or employees from any and all such claims, including, but not by way of limitation, reimbursement of any reasonable expenses City may incur in the handling, denial, or defense of such claims, including, but not by way of limitation, reasonable attorneys fees and costs. Cooperative’s obligation to indemnify City shall not extend to any injury to persons or property caused by the negligent act or failure to act of City or any actions of Cooperative taken pursuant to directions of the City if performed within the scope of the City’s directions without negligence by Cooperative. The City
shall determine who will defend any such claims arising under this Subd. g. 1. and will thereafter have complete control of such litigation. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to City; and City, in defending any action shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf. Cooperative’s obligations under this Subd. g. 1. shall survive the expiration, amendment or termination of this Section.

2. Prior to the Effective Date, Cooperative has furnished City a summary of insurance, if any, carried by the Cooperative, or of its self insured status, in either case, demonstrating adequate protection to the City from any and all obligations, liabilities, or claims of any nature whatsoever, growing out of the operation, construction, and maintenance of its Electric Facilities within the City. Cooperative shall maintain such insurance coverage.

3. In its operations under this Section, Cooperative shall observe all Federal, State and local laws, rules, regulations and orders with respect to the transmission, distribution, transformation or furnishing of electric energy and the handling of all materials, substances and wastes deemed toxic or hazardous to health, natural resources or the environment pursuant thereto (“Hazardous Substances”). Cooperative shall remove or remediate any Hazardous Substances located on, in or surrounding its Electric Facilities or caused by Cooperative to be located on, in or surrounding the public ways and public grounds or elsewhere within the City in compliance with all applicable laws, regulations and lawful governmental orders, and pay or cause to be paid all costs associated therewith. The indemnification terms and conditions of Subd. g. 1. shall apply to all claims made against City by any person including any governmental agency who or which asserts any right to costs, damages or other relief based upon the terms and conditions imposed upon Cooperative under this Subd. g. 3. or which arise from or are related to Cooperative’s acts or failure to act in compliance with any law, rule, regulation or lawful order governing Hazardous Substances.


The City shall consult with Cooperative at least two weeks prior to its action on any proposed vacation of a public way. Except where ordered pursuant to Subd. f. 1., the vacation of any public way, after the installation of Electric Facilities, shall not operate to deprive Cooperative 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 Cooperative. In no case, however, shall City be liable to Cooperative for failure to specifically preserve a right-of-way, in the exercise of its authority under Minn. Stat. § 160.29.

Subd. i. Reports and Records.
1. Cooperative shall file annually with the Clerk, not later than four (4) calendar months after the close of each calendar year of Cooperative the certified annual financial statements of Cooperative and a statement showing gross revenues from customers within Cooperative Service Area. Upon written request of City, Cooperative shall submit to City an unaudited financial statement of its operations within Cooperative Service Area, including revenues from customers located within the City, expenses of service thereof and a statement of Cooperative’s Facilities within the Cooperative Service Area, including the original cost thereof less accumulated depreciation. The latter, unaudited financial data may be based on reasonable estimates of Cooperative if and to the extent such City specific data is not reasonably accessible to Cooperative.

2. City shall be accorded the right, during normal business hours, to examine and copy the books and records of the Cooperative, which relate to Cooperative’s operations in the City, or upon City’s request in writing to provide such information relating to Cooperative’s operations in City, and which is collected and maintained by Cooperative in the ordinary course of its business, as City may reasonably designate, provided, City shall pay for Cooperative’s duplicating or other out-of-pocket costs as may be directly incurred by Cooperative in complying with City’s request, if any.

3. City, upon written request, shall have access to written customer complaints and written responses of Cooperative to such complaints for customers residing within the Cooperative Service Area.

Subd. j. Rates and Service.

1. The electric service provided and the rates charged by Cooperative for electric service, at the date hereof, are not subject to the jurisdiction of the MPUC as provided in Minnesota Statutes, Chapter 216B. City by the grant of this Franchise does not waive its right to regulate the rates and terms and conditions of Cooperative’s electric service within the Cooperative Service Area as permitted by law.

2. In the event Cooperative shall determine at any time after the Effective Date to change its rates or terms and conditions of electric service, Cooperative shall provide reasonable advance public notice of such proposed action, including Cooperative’s calculations showing the effect of such changes on average consumers within the Cooperative Service Area.

3. Every rate made, demanded or received by Cooperative for providing electric service to a customer within the City shall be just and reasonable; shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers. The rate charged by Cooperative to customers within the City shall be nondiscriminatory in relation to the rate charged to customers outside the City.
Subd. k. Franchise Fee.

1. As a condition of this Franchise hereby granted, City imposes on Cooperative the obligation to pay a franchise fee to City. The initial franchise fee shall be an amount equal to five (5%) percent of that portion of Cooperative’s annual Gross Revenues arising from its operations within the Cooperative Service Area. For purposes of computing Cooperative’s Gross Revenues, there shall be imputed and added: (i) the value of power and energy not sold or provided by Cooperative but distributed to a customer on any portion of Cooperative’s Electric Facilities, calculated at the cost that would have been paid to Cooperative or incurred in favor of Cooperative for the power and energy used by that customer if such power and energy had been sold or provided by Cooperative at the time under consideration and (ii) the value of the distribution of power and energy sold and provided by Cooperative but not distributed on Cooperative’s Electric Facilities calculated at the cost that would have been paid to Cooperative or incurred in favor of Cooperative for distribution services rendered to the customer if such power and energy had been distributed on Cooperative’s Electric Facilities. Provided, however, Cooperative’s Gross Revenues shall not be so increased to the extent the Cooperative is prohibited by law from collecting the amount so calculated from the third party providing the power and energy or providing the distribution services or from the retail purchaser thereof.

2. The franchise fee shall be paid by Cooperative to City not less often than monthly, and shall be based on complete billing months during the period for which the payment is due. The Cooperative may, in its sole discretion, impose a surcharge in its rates for electric service. Cooperative shall pay the City the franchise fee based upon the rate then prevailing under Subd. k. 1. and as billed to the customer, but subject to subsequent adjustment in either of the following events: (i) if any amount so billed subsequently becomes uncollectible after reasonable efforts of collection by Cooperative or (ii) if Cooperative shall, after any of said billings, retroactively reduce its rates or costs to its retail electric customers so that a refund is due from Cooperative of an amount previously paid or incurred by the electric retail customers. For purposes of calculating the franchise fee, no other adjustment may be made to Gross Revenues, regardless of how calculated or described and whether or not characterized as a rebate, dividend, patronage, refund or return of a capital or ownership interest. The first payment due under this Subd. k. shall be paid to City in February 2010 with respect to Gross Revenues accrued in January 2010.

3. If for any reason the amount or rate of the franchise shall be determined to be in excess of the amount or rate allowed by law, then the amount or rate shall automatically, and without further action by City, be reduced to the maximum amount or rate permitted by law.

Subd. l. Franchise Assignment or Transfer.
1. Cooperative shall promptly provide written notice ("Notice") to City if Cooperative receives and proposes to accept any offer whereby Cooperative would sell, assign, lease or otherwise transfer whether by outright sale, gift, pledge and foreclosure, merger, consolidation, reorganization or in any other manner transfer or cause the transfer ("Transfer") to any third party (the "Offeror") any of the following (an "Offer"): 

a. The Franchise, in its entirety, or any rights or obligations thereunder; 

b. The Electric Facilities and operations utilized by Cooperative in the retail sale and distribution of electricity within the Cooperative Service Area or outside of City if such Electric Facilities are substantially devoted to the provision of service with the City and are connected with facilities located within the City, extending only to the point of interconnection with interstate electric transmission lines; 

c. All or substantially all of the Electric Facilities located within the State of Minnesota that are owned, managed or operated by Cooperative or any other entity controlled by Cooperative that hereafter succeeds to the Electric Facilities, rights or obligations of Cooperative ("Cooperative Successor"); or 

d. A controlling interest in the voting or equitable ownership interest in any entity that is a Cooperative Successor. 

2. The Notice required in Subd. 1. shall set forth the following: 

a. The identity of the Offeror and the statement of the Offeror’s plans and intentions for the operation under the Franchise of the Electric Facilities; 

b. Data adequate for a reasonable evaluation by City concerning the experience and capability (both financial and technical) of the Offeror in the operation of Electric Facilities; 

c. The terms of the Offer in sufficient detail so that City may reasonably evaluate the Offer in light of the options available to it as provided in Subd. 1. 3., including, but not by way of limitation, all material terms essential to permit the City and the Cooperative to contract for the purchase of the Electric Facilities on the basis hereinafter provided. 

3. Within one hundred twenty (120) days of the receipt of the Notice (the “Option Period”), City shall have the right to exercise any one of the following options: 

a. City may consent to and permit the Transfer pursuant to the Offer, conditioned solely upon the third party filing its written acceptance of the terms and conditions of this Franchise;
b. City may deny its consent to the Transfer if the City reasonably determines in good faith that the Offeror does not have the experience or capability (financial or technical) to perform the obligations imposed on Cooperative (i) as the operator of a public utility within the City and (ii) by the terms of this Franchise, in which event, the Franchise shall be deemed revoked and terminated effective one hundred and eighty (180) days following notice thereof by City; or

c. Elect whether or not to purchase or otherwise acquire the Electric Facilities as provided by Minnesota law.

Provided, however, not withstanding any contrary provision in this Subd. l., City shall be bound to consent to any transfer under paragraph l. 3. b. if the transferee is a rural electric cooperative existing on the Effective Date or if the parties to the merger are the Cooperative and any one or more rural electric cooperatives existing on the Effective Date.

4. Except as specifically provided in this Subd. l., the City shall be deemed to have consented to the Transfer upon the terms and conditions of the Offer as if the City had affirmatively consented to the Transfer as provided in Subd. l. 3. a. unless within the Option Period it has taken the following actions:

a. City has commenced the purchase or acquisition proceedings referred to in Subd. l. 3. c.; or

b. City has denied its consent to the Transfer as provided in Subd. l. 3. b.

5. In the event the Transfer contemplated by the Offer is not completed and accomplished by the Cooperative and the Offeror pursuant to the terms and conditions stated in the Offer or is not completed and accomplished within the later of (a) one hundred twenty (120) days after the expiration of the Option Period or (b) ten business days following receipt of all regulatory approvals required by Cooperative and the Offeror to effect the Transfer, any election by the City, whether to purchase, consent (whether affirmatively or by implication) or deny, shall be deemed void and, in such case, Cooperative shall not be permitted to proceed with that Transfer except by resubmitting it to City subject and pursuant to all of the terms and conditions of this Subd. l.

Subd. m. City Purchase Rights.

Notwithstanding any provision of this Franchise, the City shall have the right to purchase or otherwise acquire Cooperative’s Electric Facilities or Cooperative Service Area, or portion(s) thereof, at any time by way of eminent domain under Minnesota Statutes, Chapter 117 or by proceedings under Minnesota Statutes, Chapter 216B, in either case, as such statutes or amendments to such are in effect on the date the City commences such
purchase or acquisition. In that event, the pleading commencing the acquisition proceeding by City shall be noticed to Cooperative for it to make any adjustments to its long-range planning for facilities and service for the area affected by the proceeding. Any damages to Cooperative as a result of such proceeding shall be determined as of the commencement of such proceeding. Cooperative shall continue to operate Electric Facilities at City’s sufferance only until such acquisition is completed. The expiration or termination of this Franchise as hereinbefore provided shall not, by itself, be an independent basis of any claim by Cooperative against City.


This section shall not be deemed to address public water utility services or any duties of the Cooperative with respect to said services.

Subd. o. Other Facilities.

1. Subject to such procedures, regulation and supervision as the Council may establish, Cooperative shall trim all trees and shrubs in the public ways of the City located within the Cooperative Service Area interfering with the proper construction, operation, repair and maintenance of any Cooperative Electric Facilities installed or maintained hereunder.

2. Street name signs, “no parking” signs and other traffic control signs, as requested and provided by City, may be installed on the electric and street light poles within the Cooperative Service Area. No rental fee or other charge shall be payable by City for this use. The installation or placement of said signs shall comply with the National Electric Safety Code.

3. City shall own its street lights within the Cooperative Service Area, and for those street lights, the City shall be served by the Cooperative and treated as a customer of the Cooperative in all respects.

Subd. p. Effective Date, Publication.

1. The Franchise shall be effective upon adoption and publication as provided by law, said publication date being December 31, 2009. Cooperative shall bear the costs of publication of this Franchise ordinance and any amendment hereto and Cooperative shall make a sufficient deposit with the City Clerk to assure publication prior to its adoption.

2. The Cooperative shall, within twenty (20) days after passage and publication of this Franchise, file with the City Clerk in writing its acceptance or rejection as provided in Subd. p. 3. thereof. If such acceptance is not filed or if a rejection is filed within said period, Cooperative, by its continuing operations under the Franchise, shall be deemed to have accepted the terms and conditions of this
Franchise, except with respect to such particulars as it may successfully challenge under the procedures specified in Subd. p. 3.

3. A rejection of this Franchise may be made by Cooperative only upon the grounds that the terms and conditions hereof exceed the lawful authority of the City under its Charter or the laws or Constitutions of the State of Minnesota or of the United States or are otherwise unlawful and shall be submitted in writing, stating with particularity the points and authorities of law upon which Cooperative relies. If the City fails to amend this Franchise or otherwise satisfy Cooperative’s objections as stated in its rejection within twenty (20) days of its receipt of Cooperative’s rejection, Cooperative shall have the right thereafter to seek appropriate judicial or administrative relief based solely upon those provisions it has alleged are unlawful in its rejection. If Cooperative fails to initiate such legal action within sixty (60) days from the expiration of the aforesaid twenty (20) day period provided for City’s amendment or cure, Cooperative shall be deemed to have waived its objections and to have accepted the terms of this Franchise.

Subd. q. Right of Repeal.

If this Franchise, having become final and operative as herein provided, shall be declared in any part illegal or void, then the City, in its sole discretion, may repeal the entire or any portion of this Section. If any material portion of this Section is declared void or illegal, then this Section shall be void in its entirety.

Subd. r. Defaults.

If Cooperative shall be in default in the performance of any of the material terms and conditions of this Section, and shall continue in default for more than thirty (30) days (or fails to initiate the cure of the default within said period and diligently pursue said cure, if the cure of the default cannot reasonably be accomplished within said 30 days) after receiving notice from the City of such default, the City may elect to cure such default and charge Cooperative for the costs thereof, seek equitable relief to require the performance, revoke and terminate this Franchise or apply such other sanctions as the Council may provide for the violation of its ordinances.

The notice of default shall be in writing, shall specify the provisions of this Section and the performance of which it is claimed that Cooperative is in default and the date of the public hearing required to be held, which date shall be not less than thirty (30) days nor more than sixty (60) days from the date of such notice. Such notice shall be served in the manner provided by the laws of Minnesota for the service of original notices in civil actions. Cooperative at such hearing shall be afforded an opportunity to present whatever information it deems appropriate. Nothing herein shall in any way be construed to prevent a review of such City action by the appropriate Minnesota Court and/or regulatory agency, nor limit the right of City to enforce this Section by such other equitable or legal remedies as may be provided by law. In the event of repeated or protracted violations of this Section involving payments due to City, City may also
require Cooperative to file a bond or letter of credit with the Clerk, against which City may draw to assure prompt payment of amounts due by Cooperative to City under this Section.

**Subd. s. Construction, Jurisdiction and Venue.**

This Franchise is granted and is intended to be performed in the State of Minnesota and shall be construed and enforced in accordance with the laws of Minnesota. Cooperative shall be subject to personal jurisdiction in the State of Minnesota. All actions related to this Section or its enforcement shall be venued in the District Courts of the State of Minnesota within which venue City is located.

**Subd. t. Amendments.**

City reserves the right to amend this Franchise by ordinance. Cooperative’s rights are also subject to the rights of purchase and acquisition referred to in Subd. m and the police power of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public, and this Franchise may be amended by City as deemed necessary or appropriate in the exercise of this power. Provided, however, no amendment shall be made that shall increase the franchise fee to be paid by Cooperative under Subd. k. l. or otherwise impose any material fee or cost payable by Cooperative not referred to in this Franchise. The foregoing provision shall not limit the right of City to impose such fees and costs against such other parties as it may from time to time elect. If the City proposes to enact any ordinance that directly amends this Franchise Ordinance the City shall provide public notice of such proposal not less than thirty (30) days prior to its final adoption.

**Subd. u.**

All ordinances or parts of ordinances affecting Cooperative in conflict herewith are hereby repealed. This Section shall not grant any rights or privileges of enforcement to any person as a member of the public or to any governmental agency other than City.

**Sec. 11.2.06. Gas Company Franchise Fee.**

**Subd. a. Franchise Fee.**

1. Consistent with Ordinance 359 and Minnesota law, a franchise fee is hereby imposed on each Gas Company. The first component of the franchise fee shall be a monthly fee per meter as follows:

<table>
<thead>
<tr>
<th>Customer Class</th>
<th>Monthly Per Meter Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>$ 1.50/month/meter</td>
</tr>
<tr>
<td>Small Commercial &amp; Industrial</td>
<td>$ 1.50/month/meter</td>
</tr>
<tr>
<td>Large Commercial &amp; Industrial</td>
<td>$ 1.50/month/meter</td>
</tr>
<tr>
<td>Interruptible</td>
<td>$ 1.50/month/meter</td>
</tr>
</tbody>
</table>
If any premises has two or more meters being billed at different rates, the franchise fee shall be the monthly fee for each meter according to the customer classification for that meter.

2. The second component of the franchise fee shall be a volumetric fee in an amount equal to the result of multiplying $0.013$ times each 100 cubic feet of gas by volume transported, sold, furnished, or delivered by the Gas Company within the City limits, using any of the Gas Company’s services or facilities. The franchise fee rates provided in Section 1.2 shall be adjusted annually for inflation, based upon the most recent Urban Consumer Price Index inflation adjustment rates. Such adjustment shall not require formal amendment to this Ordinance.

Subd. b. Fee Payment.

1. Franchise fees shall be paid to the City quarterly, based upon a calendar year, with payment due by the 30th day of the month after the end of each quarter. Payment shall be adjusted for amounts billed but uncollectible after reasonable efforts of collection by the Gas Company.

2. With each payment, the Gas Company shall provide information to summarize how the franchise fee payment was determined. The City shall have access to and the right to examine during normal business hours those of the Gas Company’s books, receipts, files, records, and documents that are reasonably necessary to verify the correctness of franchise fee payments.

3. The Gas Company may, in its sole discretion, impose a surcharge equivalent to the franchise fee in its rates for gas service. The Gas Company shall be responsible to obtain any necessary approvals to impose the surcharge upon its customers. Such approval process shall not delay the effective date of the franchise fee.

Subd. c. Effective Date

This Ordinance shall be effective immediately upon its passage and publication according to law. Collection of the franchise fees shall commence no later than sixty (60) days after the publication date of the Ordinance, said publication date being December 31, 2009.
CHAPTER 12 - MISCELLANEOUS

SECTION 12.1  CURFEW – MINORS.

Sec. 12.1.01.  It shall be unlawful for any person under the age of 18 years to loiter, wander, stroll or play in or about any street, alley, sidewalk, parkway, park, playground or other public place in the City, or in or on any public building, place of amusement or entertainment or any vacant lot at any time during the hours of 10:00 p.m. and 5:00 a.m. of the following day, official City time; provided, however, that the provision of this Section shall not apply to any such minor accompanied by his or her parent, guardian or other adult person having the care and custody of the minor, or when the minor is upon an errand directed by his or her parent, guardian, or other adult person having the care and custody of the minor.

Sec. 12.1.02.  It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of 18 years to permit such minor to loiter, wander, stroll or play in or upon any street, alley, sidewalk, parkway or park in the City, or in or upon any public building, place of amusement or entertainment, or in any vacant lot, at any time between the hours of 10:00 p.m. and 5:00 a.m. of the following day, official City time; provided, however, that the provision of this Section shall not apply when a minor is accompanied by his or her parent, guardian or other adult person having the care and custody of such minor, and when such minor is upon an errand directed by his or her parent, guardian or other adult person having the care and custody of such minor.

Sec. 12.1.03.  It shall be unlawful for any person, firm or corporation operating or in charge of any place of amusement, entertainment or refreshment to permit any minor under the age of 18 years to enter or remain in such place during the hours prohibited by this Code; provided, however, that the provisions of Section 12.1.01 shall not apply when such minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor.

Sec. 12.1.04.  The Mayor, at the request of the Superintendent of the Public Schools or the Parochial School of the City of Staples, may designate certain nights during the school year as “School Nights” at such time as said schools shall be engaged in athletic, musical, dramatic or social activities for the benefit of or entertainment of the students. The provisions of Sections 12.1.01 and 12.1.02 of this Code shall not apply to any student under the age of 18 years or to his parents, or guardian or other adult person having the care and custody of such minor, who is lawfully going to, attending or returning from any such school function on any designated “School Night” provided, however, that the limitations of Sections 12.1.01 and 12.1.02 and the penalties for the violation thereof shall apply in all respects to any such “School Night” between the hours of 12:00 p.m. and 5:00 a.m. of the following day, official City time.

Sec. 12.1.05.  Any minor under the age of 18 years who shall violate the provisions of this Code shall be deemed a delinquent child as defined in the Minnesota Statutes.
Sec. 12.1.06. Any parent, guardian or other adult person having the care and custody of a minor under the age of 18 years of age who shall violate the provisions of Section 12.1.02 hereof shall be guilty of a petty misdemeanor and punished in accordance with this Code.

Sec. 12.1.07. Any person, firm or corporation operating or in charge of any places of amusement, entertainment or refreshment who shall violate the provisions of Section 12.1.03 of this Code shall, upon conviction, be guilty of a petty misdemeanor and punished in accordance with this Code.

**SECTION 12.2 UNLAWFUL IMPORTATION OR INCINERATION OF HAZARDOUS WASTE.**

Sec. 12.2.01. It is unlawful for any person or business entity to build, construct or operate a commercial incinerator for the purpose of incinerating hazardous waste, or to incinerate commercial hazardous waste, or to import commercial hazardous waste into the City limits for the purpose of incineration or other disposal within the City limits.

Sec. 12.2.02. Definitions. For purposes of enforcement of Sec. 12.2.01, the terms defined in this Section have the meanings given them, unless the context requires otherwise:

**Subd. a.** “Hazardous waste” is defined as hazardous waste as defined in Minn. Stat. § 116.06, Subd. 13, and means any refuse, sludge, or other waste material or combinations of refuse, sludge or other waste materials in solid, semi solid, liquid, or contained gaseous form, which because of its quantity, concentration, or chemical, physical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended. Hazardous waste also includes any substance identified as a hazardous waste pursuant to Minn. Rules 7045.0131 and 7045.0135, which are incorporated herein by this reference.

**Subd. b.** “Commercial incinerator” means an incinerator established to sell hazardous waste incineration or disposal services.

Sec. 12.2.03. Violation of this Ordinance is a misdemeanor.

**SECTION 12.3 SALARIES OF MAYOR AND COUNCIL MEMBERS.**

Sec. 12.3.01. Pursuant to Minn. Stat. § 415.11, the salary for the Mayor of the City of Staples and the City Council Members of the City of Staples is hereby established and shall be in the amounts as hereinafter set forth:
Subd. a. Mayor. The salary for the Mayor shall be $250.00 per month, plus $25.00 for each special or adjourned meeting attended.

Subd. b. Council Member. The salary for each Council Member shall be $185.00 per month plus $25.00 for each special or adjourned meeting attended.

Subd. c. All salaries shall be due and payable on the 15th day of each month.

Subd. d. No salary shall be paid for special or adjourned meetings in excess of three per month.

Subd. e. This section shall have no application to reimbursement for traveling expenses and expenses incurred in attending out-of-City meetings required by law or authorized by Council action.

Subd. f. A special meeting within the meaning of this section means a meeting called pursuant to and under the provisions of this Code.

Sec. 12.3.02. This Ordinance shall be effective upon its passage and publication in accordance with law (said date of publication being January 4, 2007), and after the next succeeding municipal election.

SECTION 12.4 DISPOSAL OF UNCLAIMED PROPERTY.

Sec. 12.4.01. Definitions.

“Property” means all forms of tangible personal property.

“Motor vehicle” means every vehicle that is self-propelled.

“Net proceeds” means the sale price of any item of property or of a motor vehicle, less any costs of handling, storage and sale.

Sec. 12.4.02. Disposal of Property Other than Motor Vehicles.

Unless otherwise specified in this Section, property lawfully coming into the possession of the City of Staples, and its duly designated agents, in the course of its municipal operations shall be stored and safely maintained by the City for a period of sixty (60) days. Such property shall be disposed of by the City in the following manner:

A. During such sixty (60) day period the City may deliver such property to the true owner thereof upon proof of ownership, and upon ten (10) day’s notice by mail to other persons who may have asserted a claim of true ownership. In the event ownership cannot be determined to the satisfaction of the City Administrator, or his designee, he/she may refuse to deliver such property to anyone until order to do so by
the court. The City Administrator may in his discretion choose to deposit such property with the court if there are sufficient competing claims to the property.

B. If the true owner does not claim the property during the sixty (60) day period, the City may release the unclaimed property to the finder of the property if, at the time of delivery to the City, the finder indicated in writing that he/she wished to assert a claim to the property as finder. This subsection is not applicable if the property was found by a City employee in the ordinary course of his duties.

C. Upon the expiration of the sixty (60) day period, property remaining unclaimed may be sold by the City to the highest bidder at public auction or sale following one week published notice thereof. In lieu of public auction or sale, any of such unclaimed property may be appropriated to the use of the City upon approval of such appropriation by the City Administrator. If the property is not sold at the public auction or sale and is not deemed appropriate for use by the City, the City Administrator may then dispose of the property in any manner he/she deems appropriate.

D. The City Administrator, or his designee, may at any time without notice and in such manner as he/she determines to be in the public interest, dispose summarily of any property coming into the City’s possession that he/she determines to be dangerous or perishable. The City Administrator shall make a record of the pertinent facts of the receipt and disposal of such property.

Sec. 12.4.03. Deposit of Net Proceeds.

The net proceeds of the sale of any property other than a motor vehicle, whether by public auction or sale, shall be deposited in the general fund of the City of Staples, subject to the right of the former owner of the property to the payment of the net sale proceeds from the general fund upon application and satisfactory proof of ownership within six (6) months of the sale.

Sec. 12.4.04. Disposal of Motor Vehicles.

Motor vehicles impounded by the City of Staples and its duly designated agents, or otherwise lawfully coming into its possession during the course of its municipal operations, shall be disposed of as follows:

A. The City shall give notice of the taking within ten (10) days unless the vehicle is reclaimed prior thereto.

B. The notice shall set forth the date and place of taking, the year, make, model and serial number of the vehicle if such information can be reasonably obtained and the place where the vehicle is being held.
C. The notice shall inform the owner and any lienholders of the right to reclaim the vehicle.

D. The notice shall state that failure of the owner or lienholders to exercise their right to reclaim shall be deemed a waiver by them of all right, title and interest in the vehicle and contents and a consent to the sale of the vehicle and contents at a public auction or sale.

E. The notice shall be sent by mail to the registered owner, if any, of the vehicle and all readily identifiable lienholders of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice shall be published once in a newspaper of general circulation in the area where the motor vehicle was taken.

Sec. 12.4.05. Right to Reclaim.

The owner or lienholder shall have the right to reclaim the vehicle from the City upon payment of all towing and storage charges as well as administrative, notice and publication costs incurred by the City resulting from the taking within fifteen (15) days of the notice required by this section.

Sec. 12.4.06. Public Sale.

If the vehicle is not reclaimed pursuant to 12.4.05, it shall be sold to the highest bidder at a public auction or sale. The purchaser shall be given a receipt in a form prescribed by the registrar of motor vehicles, which shall be sufficient title to dispose of the vehicle. The receipt shall entitle the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. All vehicles shall be sold “as is” with no warranties or guarantees whatsoever.

A. Proceeds of the sale shall be used to reimburse the City for its costs involved in towing, preserving and storing the vehicle and all administrative, notice and publication costs. Any remainder from the proceeds of a sale shall be held for the previous owner or entitled lienholders for ninety (90) days and then shall be deposited in the treasury of the City.

Sec. 12.4.07. Immediate Sale

Notwithstanding any other provisions of this chapter, if a motor vehicle is more than seven (7) model years of age, is lacking vital component parts, and does not display a license plate currently valid in Minnesota or any other state or foreign country, it shall immediately be eligible for public sale pursuant to 12.4.06 and shall not be subject to the notification, reclamation or title provisions specified herein.
SECTION 12.5 TREE MANAGEMENT.

Sec. 12.5.01. The purpose of this Section is to promote and protect the public health, safety, and general welfare by providing guidelines for the planting, maintenance, and removal of trees, shrubs, and other plants within the City of Staples.

Sec. 12.5.02. There has been created and established by the Staples City Council a seven member Forestry and Beautification Board. The Forestry and Beautification Board is an advisory board that serves at the discretion of the Staples City Council. The City Administrator, or his/her authorized agent, will enforce the provisions of this Section.

Sec. 12.5.03. The City of Staples, through the Forestry and Beautification Board and the City Administrator shall have full power and authority over all trees, plants and shrubs located within any street rights of way, parks and public places in the City of Staples, as well as trees, plants and shrubs located on private property, which constitute a hazard or threat to the public health, safety and general welfare to the citizens of the City of Staples or the property of the citizens of the City of Staples.

Sec. 12.5.04. The Forestry and Beautification Board shall make available to interested persons suggested guidelines for tree and shrub planting, care and maintenance of trees and shrubs, and basic beautification landscaping design ideas.

Sec. 12.5.05. The Forestry and Beautification Board is empowered to make rules and regulations related to tree and shrub planting and care and maintenance of trees and shrubs, which, upon approval by the City Council, shall be available to the citizens of the City of Staples.

SECTION 12.6 GARBAGE COLLECTION REQUIREMENTS.

Sec. 12.6.01. Except as provided in Sec. 12.6.02 below, every property owner or occupant of a residential household or a place of business in the City of Staples shall provide for lawful collection of garbage recyclable materials and rubbish through a solid waste collection service at the property owner’s or occupant’s sole expense at least once a week.

Sec. 12.6.02. A residential household or business in the City that can ensure the City that an environmentally sound alternative is used, may be exempted from the requirements of Sec. 12.6.01 above upon making an application for such exemption to the City.

Sec. 12.6.03. If a property owner fails to provide for lawful collection as required under this Section, the City may, upon ten (10) days’ notice by certified mail, provide or contract for collection services. The costs incurred shall be certified to the County Auditor along with real estate taxes as a special assessment. A surcharge of $100.00 shall be added to any costs incurred by the City for each time that the City assesses a property under this Section.
Sec. 12.6.04. Any person, firm, or corporation violating any provision of this Section shall be guilty of a petty misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $200.00.

Sec. 12.6.05. This Section is intended to comply with the requirements of Minn. Stat. § 115A.941.

SECTION 12.7 REGULATION OF POLICE AND FIRE ALARM SYSTEMS AND FALSE ALARMS.

Sec. 12.7.01. Definitions. As used herein, unless otherwise indicated, the following terms are defined as follows:

A. “Alarm System” shall mean an assembly of equipment and devices (or a single device such as a solid state unit) arranged to signal the presence of a hazard. For the purposes of this section, the alarm, when triggered, must either be directly connected to the police and/or fire station or may signal a central monitoring agency that then notifies the Police and/or Fire Department of an emergency to which public safety personnel must respond, or may emit an audible signal that will require urgent attention and to which the public safety personnel are expected to respond. Alarm System does not include audible alarms affixed to automobiles.

B. “Alarm User” shall mean the person, firm, partnership, association, corporation, company or organization of any kind including government entities on whose premises an alarm system is maintained. “Alarm User” shall include persons occupying dwelling units for residential purposes. “Alarm User” shall not include persons maintaining alarm systems in automobiles.

C. “False Alarms” shall mean the activation of an alarm system through mechanical failure, malfunction, improper installation, or the negligence of the owner or lessee of an alarm system or of his employees or agents. It does not include activation of the alarm by utility company power outages or by acts of God.

D. “Person” shall mean any individual, partnership, corporation, association, cooperative or other entity.

E. “Calendar Year” shall mean the period January 1 through December 31 of each year,

Sec. 12.7.02. False Alarms and Payment of Fees.

A. Effective January 1, 1998, every alarm user who, during the course of a calendar year, incurs more than four (4) false police alarms, or more than one (1) false fire alarm shall pay service fees to the City of Staples, which service fee shall be determined by Council resolution.

B. Notice of false alarm charges shall be sent to the alarm user and the owner of the property where the system is installed if different from the user. Payment of the
charges shall be made to the City within 30 days of the date of notice and if the charges are not paid within said 30 day period there shall be an additional 5% penalty after the 30 day period and an initial 5% penalty shall be added for each 30 day period thereafter until the charges are paid. Unpaid charges shall be annually certified to the County Auditor and collected in the same manner as special assessments against the property.

Sec. 12.7.03. Requirements and Duties

A. Letter of Contestation. After the Chief of Police, or the Chief’s designee, or the Fire Chief, or the Fire Chief’s designee, as the case may be, determines that a false alarm has occurred at an address, the alarm user at that address may submit a letter of contestation to the Chief of Police, or to the Fire Chief, as the case may be, to examine the cause of the alarm activation. If the Chief of Police, or the Fire Chief, determines that the alarm was caused by conditions beyond the control of the alarm user, the alarm will not be counted as a false alarm at that address.

B. “False Alarms” will be excused if they are the result of an effort or order to upgrade, install, test, or maintain an alarm system and if the Police Department, or the Fire Department, is given notice in advance of said upgrade, installation, test and maintenance.

Sec. 12.7.04. Prohibitions

A. “Alarm Systems Utilizing Taping or Pre-recorded Messages.” No person shall install, monitor, or use and possess an operative alarm that utilizes taped or pre-recorded messages that deliver a telephone alarm message to the Police or Fire Department.

Sec. 12.7.05. Criminal Penalties

A. Failure or omission to comply with any section of this Section shall be deemed a misdemeanor and may be as so prosecuted, subject to penalties in effect for misdemeanors in the State of Minnesota.

Sec. 12.07.06. Separability. Every section, provision, or part of this Section is declared separable from every other Section, provision or part; and if any Section, provision or part of any Section shall be held invalid, it shall not affect any other Section, provision or part thereof.
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CHAPTER 1

NAME, BOUNDARIES, POWER AND GENERAL PROVISIONS

Section 1.01. Name and Boundaries. The City of Staples, in the Counties of Todd and Wadena, and State of Minnesota, shall, upon the taking effect of this charter, continue to be a municipal corporation, under the name and style of the City of Staples, with the same boundaries as now are or hereafter may be established.

Section 1.02. Powers of the City. The city shall have all powers, which it may now or hereafter be possible for a municipal corporation in this state to exercise in harmony with the constitutions of this state and of the United States. It is the intention of this charter that every power which the people of the City of Staples might lawfully confer upon themselves, as a municipal corporation, by specific enumeration in this charter shall be deemed to have been so conferred by the provisions of this section. This charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter shall no be construed as limiting in any way the generality of the power herein sought to be conferred.

Section 1.03. Charter a Public Act. This charter shall be a public act and need not be pleaded or proved in any case. It shall take effect thirty days after its adoption by the voters.

CHAPTER 2

FORM OF GOVERNMENT

Section 2.01. Form of Government. The form of government established by this charter is the “Council-Administrator Plan.” The council shall exercise the legislative power of the city and determine all matters of policy. The city administrator shall be responsible to the council for the proper administration of all affairs relating to the city.

Section 2.02. Boards and Commissions. There shall be no separate administrative board or commission, except for the administration of a function jointly with another political subdivision. The council shall itself be and perform the duties and exercise the powers of such boards and commissions. The council may, however, establish boards or commissions to advise the council with respect to any municipal function or activity, to investigate any subject of interest to the city, or to perform quasi-judicial functions. At least one member of the council must serve on each such board or commission.

Section 2.03. Elective Officers. The council shall be composed of a mayor and six council members who shall be qualified electors, and who shall be elected at large. Each council member shall serve for a term of four years and until his/her successor is elected and qualifies. The mayor shall serve for a term of two years and until a successor is elected and qualifies. The council shall be judges of the election of the mayor and council members.
Section 2.04. **Incompatible Offices.** No member of the council shall be appointed city administrator, nor shall any member hold any paid municipal office or employment under the city, provided, however, that volunteer fire fighters of the City of Staples, shall be able to serve as city administrator or hold any paid municipal office or employment. Until one year after the expiration of his or her term as mayor or council member no former member shall be appointed to any paid appointive office or employment under the city which office or employment was created or the compensation of which were increased during his/her term as council member.

Section 2.05. **Vacancies in the Offices.** A vacancy in the council or office of mayor shall be deemed to exist in case of the failure of any person elected thereto to qualify on or before the date of the second regular meeting of the new council, or by reason of the death, resignation, removal from office, removal from the city, continuous absence from the city for more than three months, or conviction of a felony of any such person after his/her qualification, or by reason of the failure of any council member without good cause to perform any of the duties of membership in the council for a period of three months. In each such case the council shall by resolution declare such vacancy to exist and shall forthwith appoint an eligible person to fill the same until the next regular municipal election, when the office shall be filled for the unexpired term.

Section 2.06. **The Mayor.** The mayor shall be the presiding officer of the council, except that the council shall choose from its members a president pro tem who shall hold office at the pleasure of the council and shall serve as president in the mayor’s absence and as mayor in case of the mayor’s disability or absence from the city. The mayor shall have a vote as a member of the council. He/She shall exercise all powers and perform all duties conferred and imposed upon him/her by this charter, the ordinances of the city, and the laws of the state. He/she shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the governor for the purposes of martial law. In time of public danger or emergency he/she will be responsible for providing overall direction and control of city government resources involved in the response to a disaster in accordance with the Emergency Operations Plan. He/she shall sign all warrants, orders, and all bonds, obligations and contracts on behalf of the city, except as may be otherwise provided for herein.

Section 2.07. **Salaries.** Salaries of the mayor and council members shall be fixed by the council in accordance with law and until so fixed, they shall continue to receive the same salary they were receiving at the time of the adoption of this charter. The city administrator and all subordinate officers and employees of the city shall receive such salaries or wages as may be fixed by the council.

Section 2.08. **Investigation of City Affairs.** The council shall have power to make investigations into the city’s affairs, to subpoena witnesses, administer oaths, and compel the production of books and papers. The council shall provide for an audit of the city’s accounts at least once a year by the state department in charge of such work or by a certified public accountant. The council may at any time provide for an examination or
audit of the accounts of any officer or department of the city government, and it may cause to be made any survey or research study of any subject of municipal concern.

Section 2.09 Interferences with Administration. The council may by ordinance establish the merit system in all or part of the city administration. All personnel issues shall be handled according to current written contracts and personnel policies. Except for the purpose of inquiry and investigation under Section 2.08, the council and its members shall deal with and control the administrative service solely through the city administrator, and neither the council nor any member thereof shall give orders to any of the subordinates of the city administrator, either publicly or privately.

CHAPTER 3

PROCEDURE OF COUNCIL

Section 3.01 Council Meetings. At the first regular meeting in January following a regular municipal election, the council shall meet at the usual place and time for the holding of council meetings. At this time the newly elected members of the council shall assume their duties and appoint all standing committees, boards and commissions. Thereafter the council shall meet at such times each month as may be prescribed by ordinance or resolution. The mayor or any three members of the council may call special meetings of the council. The mayor of any three members of the council or the chair of any board, committee or commission may call a special meeting of a board, committee or commission. All special meetings shall require at least 24 hours mailed notice to each member and shall be posted in designated places 72 hours prior to the meeting. Emergency meetings require immediate attention of the council and do not require posted notice, but do require that notice be given to any media that have requested notice. All meetings shall be public, and any citizen shall have access to the minutes and records thereof at all reasonable times.

Section 3.02 Secretary of Council. The city clerk shall act as secretary of the council. He/She shall keep a journal of council proceedings and perform such other duties as this charter or the council may require. The council may designate any other official or employee of the city to act as secretary of the council in the absence of the city clerk.

Section 3.03 Rules of Procedure and Quorum. The council shall determine its own rules and order of business. A majority of all members shall constitute a quorum to do business, but a smaller number may adjourn from time to time. The council may by ordinance provide a means by which a minority may compel the attendance of absent members.

Section 3.04 Ordinances, Resolutions and Motions. Except as in this charter otherwise provided, all legislation shall be by ordinance. The aye and no vote on ordinances, resolutions, and motions shall be recorded unless the vote is unanimous. An affirmative vote of majority of all the members of the council shall be required for the passage of all
ordinances and resolutions except as otherwise provided in this charter or state law.

Section 3.05 Payment of Bills. All bills, with the exception of regular payroll of full-time employees shall be presented to the city council for consideration at their regular meeting and approved for payment by majority vote of the members of the council.

Section 3.06 Procedure on Ordinances. The enacting clause of all ordinances shall be in the words, “The City of Staples does ordain”. Every ordinance shall be presented in writing. No ordinance or resolution, except for general appropriations, shall contain more than one subject, which shall be expressed in the title, and no ordinance or resolution shall be amended after its introduction so as to change its original subject or purpose. No ordinance except an emergency ordinance shall be introduced except at a regular meeting, at which meeting it shall have its first reading. Prior to the final reading, said ordinance shall be published as to title and subject matter.

Its final reading shall be held at a subsequent regular or adjourned meeting occurring not less than one week after its first reading, and said ordinance shall not be amended after the meeting at which it receives its final reading except by unanimous consent. Every ordinance except an emergency ordinance shall be published once in the official newspaper of the city before it takes effect. Proof of such publication shall be by affidavit of one of the publishers of such newspaper, which shall be prima facie evidence of the legal passage of such ordinance or resolution in all courts of this state or elsewhere.

Section 3.07 Emergency Ordinances. Any emergency ordinance is an ordinance necessary for the immediate preservation of the public peace, health, moral, safety or welfare in which the emergency is defined and declared in a preamble thereto, and is adopted by a vote of at least five members of the council. No prosecution shall be based upon the provisions of any emergency ordinance until 24 hours after the ordinance has been filed with the city clerk and posted in three conspicuous places or until the ordinance has been published, unless the person charged with violation had actual notice of the passage of the ordinance prior to the act or omission complained of.

Section 3.08 Procedure on Resolutions. Every resolution shall be presented in writing and read in full before a vote is taken thereon, unless the reading of a resolution is dispensed with by unanimous consent.

Section 3.09 Signing and Filing of Ordinances and Resolutions. Every ordinance or resolution passed by the council shall be signed by the mayor or by two other members, attested by the city clerk, filed and preserved by him/her. To the extent and in the manner provided by law an ordinance may incorporate by reference a statute of Minnesota, a state administrative rule or a regulation, a code, or ordinance or part thereof without publishing the material referred to in full.

Section 3.10. When Ordinances and Resolutions Take Effect. A resolution and an emergency ordinance shall take effect immediately upon its passage or at such later date as is fixed in it. Every other ordinance shall take effect 10 days after publication or at such later date as is fixed therein. Every ordinance and resolution adopted by the voters
of the city shall take effect immediately upon its adoption, or at such later time as is fixed therein.

Section 3.11. Amendment and repeal of Ordinances and Resolutions. Every ordinance or resolution repealing a previous ordinance or resolution or section or subdivision thereof shall give the number, if any, and the title of the ordinance or resolution to be repealed in whole or in part. No ordinance or resolution or section or subdivision thereof shall be amended by reference to the title alone, but such an amending ordinance or resolution shall set forth in full each section or subdivision to be amended and shall indicate new matter by underscoring any old matter to be omitted by enclosing it in brackets. In newspaper publication the same indications of omitted and new matter shall be used except that italics or bold-faced type may be substituted for underscoring and omitted matter may be printed in capital letters within parentheses.

Section 3.12. Revision and Codification of Ordinances. The city may revise, rearrange and codify its ordinances with such additions and deletions as may be deemed necessary by the council. Such ordinance code shall be published in book, pamphlet or continuously revised loose-leaf form and copies shall be made available by the council at the office of the city clerk for general distribution to the public, free or at a reasonable charge. Publication in such a code shall be a sufficient publication of any ordinance provision not previously published if a notice that copies of the codification are available at the office of the city clerk is published in the official newspaper for at least two successive weeks.

CHAPTER 4

NOMINATIONS AND ELECTIONS

Section 4.01. The Regular Municipal Election. A regular municipal election shall be held on the first Tuesday after the First Monday in November of each odd-numbered year commencing in 1977 as such place or places as the city council may designate. The city clerk shall give at least two weeks previous notice of the time and place of holding such election and of the officers to be elected by posting in at least one public place in each voting precinct and by publication at least once in the official newspaper, but failure to give such notice shall not invalidate such election.

Section 4.02. Special Elections. The council may by resolution order a special election and provide all means for holding it. At least two weeks’ published notice of a special election shall be given in the official newspaper. The procedure at such election shall conform as nearly as possible to that prescribed for other municipal elections, including posting requirements of Section 4.01.

Section 4.03. Procedure. Nominations for office, procedure at elections and canvass of elections shall be conducted as provided in the general election laws of the State of Minnesota. Subject to the provisions of this charter and applicable state laws, the council may be ordinance further regulate the conduct of municipal elections.
CHAPTER 5
INITIATIVE AND REFERENDUM AND RECALL

Section 5.01. General Voter Authority. The voters of the city shall have the right, in accordance with this charter, to propose ordinances and to require ordinances to be submitted to a vote by processes known respectively as the initiative and referendum. They shall also have the right to remove elected public officials by process known as recall.

Section 5.02. Petitions. An initiative, referendum or recall, shall be initiated by a petition signed by registered voters of the city equal in number to 20 percent of those who voted for mayor in the last preceding city election. Each petition shall be sponsored by a committee of five registered voters of the city, whose names and addresses shall appear on the petition. A petition may consist of one or more papers, but each paper circulated separately shall contain at its head or attached to it the statement required by Section 5.05, 5.06 or 5.07, as the case may be. Each signer shall sign his/her name and give his/her street address. Each separate page of the petition shall have appended to it a certificate, verified by oath, that each signature is the genuine signature of the person whose name it purports to be. The person making the certificate shall be a resident of the city. Any person whose name appears on a petition may withdraw his/her name by a statement in writing filed with the city clerk before the clerk advises the council of the sufficiency of the petition.

Section 5.03. Determination of Sufficiency. Immediately upon receipt of the petition, the city clerk shall examine the petition as to its sufficiency and report to the council within 20 days. Upon receiving the report, the council shall determine by resolution the sufficiency of the petition.

Section 5.04. Disposition of Insufficient Petition. If the council determines that the petition is insufficient or irregular, the city clerk shall deliver a copy of the petition, together with a written statement of its defects, to the sponsoring committee. The committee shall have 30 days in which to file additional signature papers and to correct the petition in all other particulars. However in the case of recall, they may not change the statement on the grounds upon which the recall is sought. If at the end of that period the council finds that the petition is still insufficient or irregular, the city clerk shall file the petition in his/her office and notify the sponsoring committee. In the case of initiative or referendum the final finding that the petition is insufficient or irregular shall not prejudice the filing of a new petition for the same purpose nor shall it prevent the council from referring the ordinance to the voters at the next regular or special election. In the case of recall, no further action shall be taken.

Section 5.05. Initiative. Any ordinance, except an ordinance relating to the budget or capital program, the appropriation of money, the levy of taxes, or the salaries of city
officers or employees, may be proposed by a petition which shall state at the head of each page or attached thereto the exact text of the proposed ordinance. If the council passes the proposed ordinance with amendments and a majority of the sponsoring committee do not disapprove the amended form by a statement filed with the city clerk within 10 days of its passage by the council, the ordinance need not be submitted by voters. If the council fails to enact the ordinance in an acceptable form within 60 days after the final determination of sufficiency of the petition, the ordinance shall be placed on the ballot at the next election occurring in the city. If no election is to occur within 120 days after the filing of the petition, the council shall call a special election on the ordinance to be held within such period. If a majority of those voting on the ordinance vote in its favor, it shall become effective 30 days after adoption unless the ordinance specifies a later date.

Section 5.06. **Referendum.** Any ordinance subject to the initiative may be subjected to referendum by a petition, which shall state at the head of each page or on an attached paper, a description of the ordinance. Any ordinance, upon which a petition is filed, other than an emergency ordinance, shall be suspended in its operation as soon as the petition is found sufficient. If the ordinance is not thereafter entirely repealed, it shall be placed on the ballot at the next election or at a special election called for that purpose, as the council determines. If a majority of the voters voting thereon favors the ordinance, it shall go into effect immediately or on the date specified in the ordinance; if a majority of the electors voting thereon votes against the ordinance, it shall be repealed.

Section 5.07. **Recall.** Recall is only allowed if an elected official is guilty of malfeasance or nonfeasance in the performance of official duties (Article 8, Sec. 5 of the Minnesota Constitution). The sponsoring committee shall certify to the city clerk the name of the officer whose removal is sought, a statement of the grounds for removal in not more than 250 words, and their intention to bring about his/her recall. A copy of this certificate shall be attached to each signature paper and no signature paper shall be put into circulation previous to such certification. If the petition or amended petition is found sufficient, the city clerk shall officially notify in writing the person sought to be recalled, and the City Council of the sufficiency of the petition and of the pending action. The council shall at its next, meeting by resolution, provide for the holding of a special recall election not less than 30 days nor more than 45 days after such meeting but if any other election is to occur within 60 days after such meeting, the council may in its discretion provide for the holding of the recall election at that time.

Section 5.08. **Recall Ballot.** Unless the officer whose removal is sought resigns within ten days after the receipt by the council of the completed recall petition, (In the case of resignation see Section 2.05) the form of the ballot as such election shall be as near as may be: “Shall _______________ be recalled?, “ the name of the officer whose recall is sought being inserted in the blank, and the electors shall be permitted to vote separately “Yes” or “No” upon this question. The ballot shall also contain the names of the candidates to be voted upon to fill the vacancy, in case the recall is successful, under caption: “Candidates to fill the place of _______________, If recalled”, but the officer whose recall is sought shall not himself/herself be a candidate upon such ballot. If a majority of those voting on the question of recall vote in favor of recall, the official shall
be thereby removed from office, and the candidate who received the highest number of votes for his/her place shall be elected thereto for the remainder of the unexpired term. If the officer sought to be recalled resigns within ten days after the receipt by the council of the completed recall petition, the form of ballot at the election shall be the same, as nearly as possible, as the form in use at a regular municipal election.

CHAPTER 6

ADMINISTRATION OF CITY AFFAIRS

Section 6.01. The City Administrator. The city administrator shall be the chief administrative officer of the city. He/she shall be chosen by the council solely on the basis of his/her training, experience, and administrative qualifications. The city administrator shall be appointed for an indefinite period and may be removed by the council at any time upon majority vote of all members; but after he/she has served as administrator for one year, he/she may demand written charges and a public hearing on the charges before the council prior to the date when his/her final removal takes effect. After such hearing, if one is demanded, the council upon majority vote of all members have unlimited discretion either to reinstate the administrator or make his/her removal final. Pending such hearing and removal, the council may suspend the administrator from office. The council may designate some properly qualified person to perform the duties of the administrator during his/her absence or disability or while the office of administrator is vacant.

Section 6.02. Powers and Duties of the Administrator. Subject to the provisions of this charter and any council regulations consistent therewith, the city administrator shall direct the administration of the city’s affairs. He/she shall have the powers and duties set forth in the following subdivision:

Subdivision 1. He/she shall see that this charter and the laws, ordinances and resolutions of the city are enforced.

Subdivision 2. He/she shall appoint, suspend and remove, upon the basis of merit and fitness and subject to applicable civil service provision, if any, the city clerk, and all heads of departments. Suspended or dismissed employees may appeal their suspension or dismissal in accordance with the City of Staples Personnel Policies.

Subdivision 3. He/she shall direct all department heads.

Subdivision 4. He/she shall attend all meetings of the council, with the right to take part in the discussion but not to vote; but the council may in its discretion exclude him/her from any legally closed meeting at which his/her removal is considered; his/her absence shall not prevent action of the council.
Subdivision 5. He/she shall recommend to the council for adoption such measures as he/she may deem necessary for the welfare of the people and the efficient administration of the city’s affairs.

Subdivision 6. He/she shall keep the council fully advised as to the financial condition and needs of the city, and he/she shall prepare and submit to the council the annual budget.

Subdivision 7. He/she, when necessary shall prepare and submit to the council for adoption an administrative code incorporating the details of administrative procedure, and from time to time he/she shall suggest amendments to such code.

Subdivision 8. He/she shall perform such other duties as may be prescribed by this charter or by law or required of him/her by ordinances or resolutions adopted by the council.

Section 6.03. Departments of Administration. The council may create such departments, divisions, and bureaus for the administration of the city’s affairs as may seem necessary, and from time to time alter their powers and organization. It shall, when necessary, and in conjunction with the city administrator, prepare a complete administrative code for the city and enact it in the form of an ordinance, which may be amended from time to time by ordinances.

Section 6.04. Subordinate Officers. There shall be a city clerk and such other officers subordinate to the city administrator as the council may create by resolution. The city clerk shall be subject to the direction of the city administrator, and shall have such duties in connection with the keeping of the public records, the custody and disbursement of the public funds, and the general administration of the city’s affairs as the council prescribes. He may be designated to act as secretary of the council and also as treasurer. The council may by resolution abolish offices which have been created by resolution, and/or combine the duties of various offices as it may see fit.

Section 6.05. Purchases and Contracts. The city administrator shall be the chief purchasing agent of the city. All city purchases and contracts shall be made or let by the city administrator when the amount involved does not exceed the amount set by state law or a lesser amount set by the council by ordinance. All other purchases shall be made and all other contracts let by the council after the recommendation of the city administrator has first been obtained. Contracts shall be made in compliance with the uniform contracting law, and whenever competitive bids are required, the contract shall be let to the lowest responsible bidder. All contracts, bonds, and instruments of any kind to which the city is a party shall be signed by the mayor and the city administrator on behalf of the city and shall be executed in the name of the city. The council may by ordinance adopt further regulations for the making of bids and letting of contracts.
CHAPTER 7

TAXATION AND FINANCES

Section 7.01. Council to Control Finances. The council shall have full authority over the financial affairs of the city. It shall provide for the collection of all revenues and other assets, the auditing and settlement of accounts, and the safekeeping and disbursement of public moneys.

Section 7.02. Fiscal Year. The fiscal year of the city shall be the calendar year.

Section 7.03. System of Taxation. Subject to the state constitution, and except as forbidden by it or by state law, the council shall have full power to provide by ordinance for a system of local taxation. This authority includes the power by ordinance to assess, levy, and collect taxes on all subjects or objects of taxation except as limited or prohibited by the state constitution, by this charter or by laws imposing restrictions upon the city irrespective of charter provisions. The council shall serve as, or provide for, by resolution a board of equalization.

Section 7.04. Submission of Budget. Annually the city administrator shall submit to the council his/her recommended preliminary budget and preliminary tax levy in accordance with state law.

The budget shall provide a compete financial plan for all city funds and activities for the ensuing fiscal year and, except as required by law or charter, shall be in such form as the administrator deems desirable or the council may require. It shall include a summary and show in detail all estimated income and all proposed expenditures, including debt service and comparative figures for the current fiscal year, actual and estimated, and the preceding fiscal year. In addition to showing proposed expenditures for current operation, it shall show proposed capital expenditures to be made during the year and the proposed method of financing each such capital expenditure. For each utility operated by the city, the budget shall show anticipated net surplus or deficit and the proposed method of its disposition; and subsidiary budgets for each such as appendices. The total proposed operating budget to be provided from the property tax shall not exceed the amount authorized by law and this charter. Consistent with these provisions, the budget shall contain such information and be in the form prescribed by ordinance and by law.

Section 7.05. Capital Improvement Program. The administrator shall prepare and submit to the council a recommended five-year capital improvement program no later than June 1 each year. The capital improvement program shall include a list of all capital improvements proposed to be undertaken during the next five fiscal years, with appropriate supporting information as to the necessity for such improvements; cost estimates, method of financing and recommended time schedules for each such improvement; and the estimates annual cost of operating and maintaining the facilities to be constructed or acquired. This information shall be revised and extended each year for capital improvements still pending or in process. The council shall hold a public hearing.
on the capital improvement program and adopt it with or without amendment no later than August 15.

Section 7.06. **Council Action on Budget.** The final budget shall be considered at a scheduled council meeting as prescribed by state law and at subsequent meetings until a budget is adopted for the ensuing year. The meetings shall be so conducted as to give interested citizens a reasonable opportunity to be heard. The council may revise the proposed budget but no amendment to the budget shall increase the authorized expenditures to an amount greater than the estimated income. The council shall adopt the final budget not later than the date required by state law, and shall by resolution set forth the total for each budgeted fund and each department with such segregation as to objects and purposes of expenditures as the council deems necessary for purposes of budget control. The council shall also adopt a resolution levying the amount of taxes provided in the budget and the clerk shall certify the tax resolution to the county auditor in accordance with law. Adoption of the budget shall constitute appropriations at the beginning of the fiscal year of the sums fixed in the resolution for the several purposes named.

Section 7.07. **Enforcement of the Budget.** The city administrator shall enforce strictly the provisions of the budget. He/she shall not authorize any payment or the incurring of any obligation by the city unless an appropriation has been made in the budget and there is a sufficient unexpended balance left after deducting the total past expenditures and encumbrances against the appropriation. No officer or employee of the city shall place any order to make any purchase except for a purpose and to the amount authorized in the budget. Any obligation incurred by any person in the employ of the city for any purpose not authorized in the budget or for any amount in excess of the amount authorized shall be a personal obligation upon the person incurring the obligation. No check shall be issued or transfer made to any account other than one owned by the city until the claim to which it relates has been supported by an itemized bill, payroll, or time-sheet or other document approved and signed by the responsible city officer who vouches for its correctness and reasonableness.

Section 7.08. **Alterations in the Budget.** After the budget resolution has been adopted, the council shall not increase the amounts fixed in the resolution beyond the estimated receipts except to the extent that actual receipts exceed the estimate. At any time the council may, by resolution approved by a majority of its members, reduce the sums appropriated for any purpose by the budget resolution or by a vote of five members authorize the transfer of sums from unencumbered balances of appropriations in the budget to other purposes.

Section 7.09. **Funds.** There shall be maintained in the city treasury a general fund and such other funds as may be required by statute, ordinance or resolution. The council may, by ordinance or resolution, make inter-fund loans, except from trust and agency funds, as it may deem necessary and appropriate.

Section 7.10. **City Indebtedness.** Except as provided in Sections 7.11 and 7.12, no
obligations shall be issued to pay current expenses, but the council may issue and sell obligations for any other municipal purpose in accordance with law and within the limitations prescribed by law. Except in the case of obligations for which an election is not required by this charter or by law, no such obligations shall be issued and sold without the approval of the majority of the voters voting on the question at a general or special election.

Section 7.11. Tax Anticipation Certificates. At any time after January 1 the council may issue certificates of indebtedness in anticipation of the collection of taxes levied the previous year for any fund and not yet collected. The total amount of certificates issued against any fund for any year together with interest thereon until maturity shall not exceed the total current taxes for the fund uncollected at the time of issuance. Such certificates shall be issued on such terms and conditions as the council may determine, but they shall become due not later than April 1 of the year following their issuance. The proceeds of the tax levied for the fund against which tax anticipation certificates are issued and the full faith and credit of the city shall be irrevocably pledged for the redemption of the certificates.

Section 7.12. Emergency Debt Certificates. If in any year the receipts from taxes or other sources should, from some unforeseen cause, become insufficient for the ordinary expenses of the city, or if any calamity or other public emergency necessitates the making of extraordinary expenditures, the council may by ordinance issue on such terms and in such manner as the council determines emergency debt certificates to run not to exceed three years. A tax sufficient to pay principal and interest on such certificates with the margin required by law shall be levied as required by law. The ordinance authorizing an issue of such emergency debt certificate shall state the nature of the emergency and be approved by at least five members of the council. It may be passed as an emergency ordinance.

CHAPTER 8

PUBLIC IMPROVEMENTS AND SPECIAL ASSESSMENTS

Section 8.01. Power to Make Improvements and Levy Assessments. The city shall have the power to make any and every type of public improvement not forbidden by the laws of this state and to levy special assessments to pay all or any part of the cost of such improvements as are of a local character. The amounts assessed to benefited property to pay for such local improvements may equal the cost of the improvement, including all costs and expenses connected therewith, with interest, until paid, but shall in no case exceed the benefits to the property.

Section 8.02. Assessments for Services. The council may provide by ordinance that the cost of sprinkling, snow, or rubbish removal, or of any other service to streets, sidewalks, or other public property, or the costs of any services to other property undertaken by the city may be assessed against the property benefited and collected in like manner as are special assessments.
Section 8.03. Local Improvement Procedure. When the city undertakes any local improvement to which the state local improvement code applies, it shall comply with the provisions of that law. The council may by ordinance prescribe the procedure to be followed in making any other local improvement and levying assessments therefore.

Section 8.04. Public Works: How Performed. Public works, including all local improvements, may be constructed, extended, repaired, and maintained either directly by day labor or by contract. The city shall require contractors to give bonds for the protection of the city and all persons furnishing labor and materials pursuant to the laws of the state.

CHAPTER 9

EMINENT DOMAIN

Section 9.01. City May Take Entire Plant. If the city condemns a public utility which is operated at the time of the commencement of the condemnation proceedings as one property or one system, it shall not be necessary in the condemnation proceedings or any of the proceedings of the council, to describe or treat separately the different kinds of property composing such system, but all of the property, lands, articles, franchises, and rights, which comprise such system may, unless otherwise ordered by the court, be treated together as one property and award for the whole property in one lump sum may be made by the commissioners or other body assessing the damages of condemnation. This does not prevent the city, when the plant and property are separable into distinct parts, from acquiring only such part or parts thereof as may be necessary in the public interest.

CHAPTER 10

PUBLIC OWNERSHIP AND OPERATION OF UTILITIES

Section 10.01. Acquisition and Operation of Utilities. The city may own and operate any water, gas, light, power, heat, telephone, transportation or other public utility for supplying its own needs for utility service or for supplying utility service to private consumers or other governmental agencies. It may construct all facilities reasonably needed for the purpose and may acquire any existing utility properties so needed. The city shall not acquire or construct any public utility unless the proposition to acquire or to construct it has been incorporated in an ordinance and adopted by the council. Such ordinance shall not be an emergency ordinance. The operation of all public utilities owned by the city shall be under the supervision of the city administrator.

Section 10.02. Rates and Finances. Upon recommendations made by the city administrator or upon its own motion, the council may fix rates, fares and prices, for municipal utilities but such rates, fares and prices shall be just and reasonable. In like manner, the council may prescribe the time and manner in which payments for all such
services shall be made, and may make such other regulations as may be necessary, and prescribe penalties for violation of such regulations.

Section 10.03. **Purchase in Bulk.** The council may, in lieu of providing for the local production of gas, electricity, water, and other utilities, purchase the same in bulk and resell them to local consumers at such rates as it may fix.

Section 10.04. **Lease of Plant.** The council may, if the public interests will be served thereby, contract with any responsible person, co-partnership, or corporation for the operation of any utility owned by the city, upon such rentals and conditions as it may deem necessary; but such contract shall be embodied in and let only by an ordinance approved by five members of the council and subject to popular referendum. Such ordinance shall not be an emergency ordinance. In no case shall such contract be for a longer term than ten years.

Section 10.05. **Public Utility. How Sold.** No public utility owned by the city shall be sold or otherwise disposed of by the city unless the full terms of the proposition of sale or other disposition are embodied in an ordinance approved by a majority of the electors voting thereon at a general or special election. In the case of a water works or light plant, any sale, lease, or abandonment shall be subject, in addition to the requirements of state law.

**CHAPTER 11**

**MISCELLANEOUS AND TRANSITORY PROVISIONS**

Section 11.01. **Official Publications.** The council shall annually designate a legal newspaper of general circulation in the city as its official newspaper in which shall be published ordinances and other matter required by law to be so published as well as such other matters as the council may deem it in the public interest to have published in this manner.

Section 11.02. **Oath of Office.** Every officer of the city shall, before entering upon the duties of his/her office, take and subscribe an oath of office in substantially the following form. “I do solemnly swear (or affirm) to support the constitution of the United States and of this state and to discharge faithfully the duties devolving upon me as (mayor, councilman, city administrator, etc.) of the City of Staples to the best of my judgment and ability.

Section 11.03 **City Officers Not to be Interested in Contracts.** Except as otherwise permitted by law, no officer of the city who is authorized to take part in any manner in any contract with the city shall voluntarily have a personal financial interest in such contract or personally benefit financially therefrom.

Section 11.04. **Official Bonds.** The city administrator, the city clerk, and such other officers or employees of the city as may be provided for by ordinance shall each, before
entering upon the duties of his/her respective office or employment, give a corporate surety bond to the city in such form and in such amount as may be fixed by the council as security for the faithful performance of his/her official duties and the safekeeping of the public funds. Such bonds may be either individual or blanket bonds in the discretion of the council. They shall be approved by the city council, and approved as to form by the city attorney, and filed with the city clerk. The provisions of the laws of the state relating to official bonds not inconsistent with this charter shall be complied with. The premium on such bonds shall be paid by the city.

Section 11.05. **Sales of Real Property.** No real property of the city shall be disposed of except by ordinance. The net cash proceeds of any sale of the property shall be used to retire any outstanding indebtedness incurred by the city in the acquisition or improvement of the property. Any remaining net proceeds shall be used to finance other improvements in the capital improvement budget or to retire any other bonded indebtedness.

Section 11.06. **Vacation of Streets.** The council may by ordinance approved by a majority of the members of the council vacate any street or alley or part thereof within the city. Such vacation may be made only after published notice and an opportunity for affected property owners and public to be heard, and upon such further terms and by such procedure as the council by ordinance may prescribe. A notice of completion of such proceedings shall be filed with the proper county officers in accordance with law.

Section 11.07. **City of Succeed to Rights and Obligations of Former City.** The city shall succeed to all the property, rights, and privileges, and shall be subject to all legal obligations of the city under the former charter.

Section 11.08. **Existing Ordinances Continued.** All ordinances and regulations of the city in force when this charter takes effect, and not inconsistent with the provisions thereof, are hereby continued in full force and effect until amended or repealed.

Section 11.09. **Pending Condemnation, Improvements and Assessments.** Any condemnation, improvement or assessment proceeding in progress when this charter takes effect shall be continued and completed under the laws under which such proceedings were begun. All assessments made by the city prior to the time when this charter takes effect shall be collected as if this charter had not been adopted.

Section 11.10. **Ordinances to Make Charter Effective.** The council shall by ordinance make such regulations as may be necessary to carry out and make effective the provisions of this charter.