

CHAPTER 6

PUBLIC UTILITIES, PROPERTY IMPROVEMENTS AND WAYS

	<u>Page</u>
Section 1 Municipal Utilities	6-3
Section 2 Water, Sanitary Sewer and Stormwater Use and Billing Ordinance	6-13
Section 3 Sanitary Sewer Use and Operations	6-23
Section 4 Special Assessments For Public Improvements	6-43
Section 5 Reserved	6-57
Section 6 Right-of-Way Management	6-59
Section 7 Park and Trail Regulations	6-81
Section 8 Street Lighting	6-87
Section 9 Stormwater Utilities	6-95

SECTION 1

MUNICIPAL UTILITIES

Section:

- 6-1-1 Purpose and Establishment of Utilities
- 6-1-2 Definitions
- 6-1-3 Mandatory Connection to Public Systems
- 6-1-4 Fixing Rates and Charges for Municipal Utilities
- 6-1-5 Water Access Charge (WAC)
- 6-1-6 Sewer Access Charge (SAC)
- 6-1-7 Water Emergency
- 6-1-8 Water Use Conservation
- 6-1-9 Storm Water Fees

6-1-1: PURPOSE AND ESTABLISHMENT OF UTILITIES: There is hereby established a Utilities Department. The water, sanitary sewer, and storm sewer and drainage systems as they are now constituted or shall be hereafter enlarged or extended shall be operated and maintained under the provisions of this Section subject to the authority of the City Council at any time to amend, alter, change and repeal the same. The City Clerk shall have charge and management of the water, sanitary sewer, and storm sewer and drainage systems subject to the direction of the City Council. The City Clerk may designate other City employees to carry out duties and responsibilities under this Section. (Ord. 95-5, March 27, 1995)

6-1-2: DEFINITIONS: As used in this Section, the following words and terms shall have the meanings stated:

Company, Grantee, and Franchisee. Any public utility system to which a franchise has been granted by the City.

Consumer and Customer. Any user of a utility. (Ord. 95-5, March 27, 1995)

Domestic Use. Water systems used for potable water or irrigation purposes but not including wells drilled for such purposes as dewatering, groundwater monitoring, elevator borings or environmental boring holes. (Ord. 2011-07, adopted March 28, 2011)

Hook Up. The original connection to the utility for that property. (Ord. 95-1, Jan. 9, 1995)

Municipal Utility. Any City owned utility system, including but not by way of limitation, water service, sanitary sewer service, and storm water sewer and/or drainage service. (Ord. 95-5, March 27, 1995)

Private System. Any water, sewer or storm sewer utility system not owned, operated and maintained by the City of Otsego. (Ord. 2011-07, adopted March 28, 2011)

Service. Providing a particular utility to a customer or consumer.

Utility. All utility services, whether the same be public City owned facilities or furnished by public utility companies. (Ord. 95-5, March 27, 1995)

6-1-3: MANDATORY CONNECTION TO PUBLIC SYSTEMS:

- A. The City shall regulate connection to public water, sanitary sewer and storm water utility systems pursuant to Minnesota Statutes 412.221.
- B. It shall be unlawful for any person to install or hook up to a private water system to provide water for human consumption, irrigation or other domestic use, install or hook up to a private sanitary sewer system, or to hook up to private storm water sewer and/or drainage system in the City, except in cases where the public water, sanitary sewer, or storm water sewer and/or drainage systems are not accessible to the premises requesting installation or hook up.
- C. The City Engineer shall determine if the public water, sanitary sewer, or storm water sewer and/or drainage systems are accessible to the premises requesting installation or hook up to public systems. (Ord. 2011-07, adopted March 28, 2011)
- D. Capacity for sanitary sewer and water service shall be reserved upon payment of utility availability charges for a period of five (5) years. If after five (5) years, a user having paid utility availability charges has not paid the required utility connection charges applicable to the use and connected to the municipal utility system there shall be no guarantee of adequate sanitary sewer or water utility capacity to serve a development of the property. (Ordinance 2012-10, adopted August 13, 2012)

6-1-4: FIXING RATES AND CHARGES FOR MUNICIPAL UTILITIES:

- A. All rates and charges for municipal utilities, including but not by way of limitation, rates for service, rates for contribution to the system, permit fees, deposit, hook up, meter testing fees, disconnection fees, reconnection fees, and penalty fees for delinquency, shall be set forth in Section 2-4-2 of the City Code.
- B. For the purpose of fixing rates and charges, the City Council may categorize and classify under various types of services, or by contribution to the system,

provided that such categorization and classification in just and equitable and is included in the resolution authorized by this Section.

- C. Residential Equivalent Connections (RECs) will be established for non-residential users:
1. The number of RECs for a specific use will be as per the current version of the Metropolitan Council Environmental Services Procedures Manual.
 2. The City Council, at its discretion upon a finding that the Metropolitan Council Environmental Services Procedures Manual may not apply due to circumstances unique to a particular user, may enter into an agreement to determine the number of RECs based on one of the following alternative methods:
 - a. Information is provided regarding actual water and sewer use by the same or substantially similar use that has been existing for a period of not less than three (3) years.
 - b. The user shall escrow the required fee(s) calculated in accordance with the Metropolitan Council Environmental Services Procedures Manual and monitor actual water use for a period of three(3) years:
 1. If the actual water and sewer use during this period is less than the RECs estimated by the Metropolitan Council Environmental Services Procedures Manual, the City will refund the difference without interest.
 2. If the actual water and sewer use during this period is greater than the RECs estimated by the Metropolitan Council Environmental Services Procedures Manual the user is not obligated to pay additional fees and the escrow funds shall be released and deposited into the respective Water Fund or Sewer Fund. (Ordinance 2012-10, adopted August 13, 2012)
- D. Expansion and Redevelopment. If an existing use connected to the municipal utility systems is expanded or redeveloped so as to increase the number of RECs, additional water connection charges and sewer connection charges shall be paid for the additional RECs at the current rate established by Section 2-4-2 of the City Code. There shall be no refund of water connection charges or sewer connection charges already paid if the expansion or redevelopment results in a reduction of the number of RECs. (Ordinance 2013-09, adopted February 25, 2013)

forth by Section 2-4-2 of the City Code. (Ordinance 2013-09, adopted February 25, 2013)

C. Water Connection Charges:

1. The Water Connection Charge for one (1) REC shall be adopted by the City Council in Section 2-4-2 of the City Code and calculated by the City Engineer to include those current and future costs related to the construction the municipal water utility other than the facilities that comprise the distribution system.
2. The calculation of the Water Connection Charge required to be paid for a specific use shall be calculated by multiplying the Water Connection Charge set forth in Section 2-4-2 of the City Code by the number of RECs for that use.
3. For residential uses the Water Connection Charge shall be paid prior to issuance of a building permit, except as may be provided for by an agreement entered into by the City Council at its discretion, except:
 - (a) For the initial development of residential uses on lots of record final platted prior to August 13, 2012, the water connection charges to be paid prior to issuance of a building permit shall be calculated as one-half the sum of the Water Availability Charge and the Water Connection Charge as set forth by Section 2-4-2 of the City Code multiplied by the number of RECs.
4. For commercial, industrial and institutional uses the Water Connection Charge applicable to the build out of the finished space within all or a portion of a building shall be paid prior to issuance of a building permit for that construction.

D. No person shall connect to the City water system without also connecting to the City sanitary sewer system, except by resolution of the City Council. (Ordinance 2012-10, adopted August 13, 2012)

6-1-6: SEWER UTILITY CHARGES: The City Council has determined that in order to pay for the cost of construction, reconstruction, repair, enlargement, improvement, maintenance, operation, and use of the City sewer system; the cost of complying with State and Federal regulations; and the principal and interest to become due on obligations issued or to be issued, it is necessary to impose just and equitable charges for the use and availability of the municipal sewer system pursuant to Minnesota Statutes, Section 444.075, Subdivision 3.

A. From and after hookup of any premises to the City water system, the owner or owners of said premises shall pay for such sewer services and usage at rates set forth in Section 2-4-2 of the City Code. (Ordinance 2012-10, adopted August 13, 2012)

B. Sewer Availability Charges:

1. The Sewer Availability Charge for one (1) REC shall be adopted by the City Council in Section 2-4-2 of the City Code and calculated by the City Engineer to include those current and future costs related to the construction of the trunk collection system for the municipal sewer utility.

2. The calculation of the Sewer Availability Charge required to be paid for a specific use shall be calculated by multiplying the Water Availability Charge set forth in Section 2-4-2 of the City Code by:

- a. Single Family, Two Family and
Townhouse Residential Uses: Actual RECs.
- b. Multiple Family Residential Uses: 9.0 RECs/Gross Acre.
- c. Commercial, Industrial or
Institutional uses: 3.5 RECs/Gross Acre.

3. The Sewer Availability Charge shall be paid at the time of final plat approval except as provided for by Section 6-1-6.B.4 of this Chapter or as may allowed by an agreement entered into by the City Council at its discretion.

4. For multiple family residential, commercial, industrial and institutional uses to be constructed on lots of record existing as of February 25, 2013:

- a. The Sewer Availability Charge as provided for by Section 6-1-6.B.3 of this Chapter shall be paid at the time of issuance of a building permit for the initial construction.
- b. The Sewer Availability Charge required to be paid at the time building permit is issued shall be the current fee in effect as set forth by Section 2-4-2 of the City Code. (Ordinance 2013-09, adopted February 25, 2013)

C. Sewer Connection Charges:

1. The Water Connection Charge for one (1) REC shall be adopted by the City Council in Section 2-4-2 of the City Code and calculated by the City Engineer to include those current and future costs related to the

construction of the municipal sewer utility other than the facilities that comprise the collection system.

2. The calculation of the Sewer Connection Charge required to be paid for a specific use shall be calculated by multiplying the Sewer Connection Charge set forth in Section 2-4-2 of the City Code by the number of RECs for that use.
 3. For residential uses the Sewer Connection Charge shall be paid prior to issuance of a building permit, except as may be provided for by an agreement entered into by the City Council at its discretion except:
 - (a) For the initial development of residential uses on lots of record final platted prior to August 13, 2012, the Sewer Connection Charges to be paid prior to issuance of a building permit shall be calculated as one-half the sum of the Sewer Availability Charge and the Sewer Connection Charge as set forth by Section 2-4-2 of the City Code multiplied by the number of RECs.
 4. For commercial, industrial and institutional uses the Sewer Connection Charge applicable to the build out of the finished space within all or a portion of a building shall be paid prior to issuance of a building permit for that construction.
- D. No person shall connect to the City sewer system without also connecting to the City water system, except by resolution of the City Council. (Ordinance 2012-10, adopted August 13, 2012)

6-1-7: WATER EMERGENCY: To protect the health and safety of the consumers, as well as the general welfare, the Public Utilities Director, City Administrator or their designee may impose emergency regulations pertaining to City water use.

- A. During an emergency, restrictions for the use of City water may include, but are not limited to, the total prohibition of watering, sprinkling, or irrigation of lawn, grass, turf, or plantings.
- B. Restrictions imposed during an emergency shall continue in effect until the end of the emergency and/or removed by the City Administrator or their designee.
- C. Notification of restrictions to City water use may be given by publication or by posting in the City Hall and at such public places as the council may direct.
- D. Penalties:

1. Failure to comply with restrictions or prohibitions imposed under this Section 6-1-7 shall result in a surcharge for water service for each violation in an amount established by Section 2-4-2.J of the City Code, which will be added to the water bill for the property on which such violation occurs. (Ordinance 2008-02, February 11, 2008)
2. Violators will be notified prior to the imposition of a surcharge mailed to the property owner and the City shall presume receipt of the notice three (3) days after mailing. Subsequent violations in the same calendar year will result in the imposition of a surcharge to be included on the bill for the utility account to be paid in accordance with Section 6-2-3 of this Chapter. (Ordinance 2016-05, February 22, 2016)

6-1-8: WATER USE CONSERVATION: To conserve water resources and allow the City's water system flexibility in meeting peak demands, certain limitations on the use of the City's water supply is hereby established:

- A. An odd-even irrigation restriction based on street addresses is in effect from May 1 to September 30 each year; Property owners with odd numbered addresses may water on odd calendar days and property owners with even numbered addresses may water on even calendar days.
- B. Homeowners' associations and apartment complexes that provide a common irrigation system shall irrigate only every other day.
- C. City water shall not be used for the purposes of irrigating or watering lawns, sod, or seeded areas between eleven o'clock (11:00) A.M. and five o'clock (5:00) P.M. daily.
- D. Sections 6-1-8.A to C of this Section do not apply in the following situations:
 1. Limited hand watering of plants using a hose or hand held watering container.
 2. Irrigation of new landscaping, sod, or seed within thirty (30) days of installation.
 3. Irrigation from a source other than the City's water supply if the the alternative source is allowed by the City Code and properly permitted by the State of Minnesota. Under this exemption, the City may inspect the property to ensure compliance.
- E. Penalties:

1. Failure to comply with restrictions imposed under this Section 6-1-8 shall result in a surcharge for water service for each violation in an amount established by Section 2-4-2.J of the City Code, which will be added to the water bill for the property on which such violation occurs.
2. Violators will be notified prior to the imposition of a surcharge mailed to the property owner and the City shall presume receipt of the notice three (3) days after mailing. Subsequent violations in the same calendar year will result in the imposition of a surcharge to be included on the bill for the utility account to be paid in accordance with Section 6-2-3 of this Chapter. (Ordinance 2016-05, February 22, 2016)

6-1-9: STORM WATER UTILITIES:

- A. Storm Sewer Improvement District. There is hereby established a Storm Sewer Improvement District incorporating all properties within the territorial limits of the City of Otsego as of October 13, 2014 for the purpose of building, constructing, reconstructing, repair, enlargement, improvement, or in any other manner obtain storm water management facilities, and maintain and operate the storm water management facilities and including financing and collection of charges for said actions related to storm water management facilities in accordance with Minnesota Statute 444.075.
- B. Storm Water Utility Fee.
 1. There is hereby established a fee for City Storm Water services. Said fee is authorized by Minnesota Statute 444 and is to be to be uniformly applied across the City and is based upon the estimated amount of impervious surfaces for certain lots as well as the expected discharge of storm water from a particular parcel based upon its use. The purpose of the fee is to pay for costs incurred by the City for implementation of statutorily required storm water programs, for required capital improvements to the overall system, required inspection of the system and replacement and repair of the system. The City finds that these programs, repairs, maintenance and improvements benefit all properties in the City but that such benefit is not equally realized by all properties, nor do properties contribute to overall storm water flow equally.
 2. In order to provide for as equitable a system as possible, the City fee is hereby established based upon a variation of the Rational Method as outlined in the Fee Study prepared for the City by Hakanson Anderson and Associates dated December 8, 2008. The Rational Method adopted is a variation of a formula taking into account the averaged runoff coefficient of certain classes of properties, the average area of parcels within each class and the intensity of use of that parcel as set forth in the report listed

above. The study identifies three general classes of properties based upon use by zoning designation, residential uses, commercial and industrial uses, and agricultural uses.

3. Based upon the formula, the entire City was evaluated to determine the number of parcels in each designated zoning district. The composite C values (runoff coefficient) were adjusted by the average area of parcels within each respective district in order to determine proper allocation of costs between different kinds of lots. The final allocation of costs represents the area adjusted C value for a particular parcel as a percentage of the overall sum of area adjusted C values for the entire City.
4. Operation of the formula above results in a fee per parcel to be charged to existing parcels within the City as their fair share of the costs incurred by the City. The basic formula will be recalculated yearly and included in the City fee ordinance in order to account for ongoing changes in lot size and use and changes in zoning designation. The formula may be amended from time to time by amendment to this ordinance.
5. The fee is for the purpose of paying for the ongoing review, monitoring, repair, maintenance and improvement of the existing City storm water infrastructure. The City may include in the fee any and all costs incurred relative to storm water drainage within the City no matter how said fees are categorized, or may choose to pay portions of the fee from the general levy or other funding sources. Nothing in this ordinance is to be construed as a limitation on the City's ability to allocate or reallocate the costs herein to this fee or to other funding sources from year to year. Administrative costs for collection of the fee may be added to bills as an additional charge. The fee shall be administered by the City Utility Department and shall be billed or charged to residents on a regular basis as determined by the Utility Billing Department. (Ordinance 2014-13, adopted October 13, 2014)

SECTION 2

WATER, SANITARY SEWER AND STORMWATER USE AND BILLING ORDINANCE

Section:

6-2-1	Purpose
6-2-2	Accounts
6-2-3	Billing
6-2-4	Utility Rate Schedule
6-2-5	Delinquent Accounts
6-2-6	Water Line Connections
6-2-7	Meters
6-2-8	Service Pipes: Responsibility for Repairs
6-2-9	City Liability
6-2-10	Fire Hydrants
6-2-11	Discontinued Service
6-2-12	Penalty

6-2-1: PURPOSE: The Otsego City Council has determined that in order to pay for the cost of construction, reconstruction, repair, enlargement, improvement, maintenance, operation, and use of the City of Otsego water, sanitary sewer systems and stormwater systems; the cost of State and Federal regulations; and the principal and interest to become due on obligations issued or to be issued, it is necessary to impose just and equitable charges for the use and availability of the City of Otsego municipal water and sanitary sewer systems pursuant to Minnesota Statutes Chapter 444. (Ord. 2007-13, September 24, 2007)

6-2-2: ACCOUNTS:

- A. Owners or users of any property within those areas where City water, sanitary sewer and/or stormwater service is available (meaning physically available to the property and deliverable pursuant to the City's assessment policy and the applicable sections of the City Comprehensive Land Use Plan) to the property may not use a non-municipal system without specific written agreement with or some other specific approval from the City of Otsego.
- B. All accounts shall be carried in the name of the property owner who personally, or by his or her authorized agent, applied for such service. The owner shall be liable for services supplied to and consumed by the property, whether he or she is occupying the property or not. The owner shall be liable for services supplied to and consumed by the property even if the property is a rental property. (Ord. 2007-13, September 24, 2007)

6-2-3: BILLING:

- A. Charges shall be billed on one bill as applicable to each account. All charges shall be due upon receipt and considered delinquent immediately after the due date of the current bill.
- B. All bills shall contain the address and telephone number of the City Utility Department; that information shall be clearly visible and easily readable on all bills.
- C. Residential, commercial and industrial property bills shall be mailed to the owner on a monthly basis and shall specify the water consumed in accordance with the current fee schedule set by ordinance of the Otsego City Council. (Ord. 2007-13, September 24, 2007)
- D. All charges shall be due and payable as provided in this Section within thirty (30) days after the date of any billing statement. (Ord. 2008-17, August 25, 2008)
- E. Any unpaid charges shall constitute a lien against the premises from and after the date they were due and shall be processed as delinquent in accordance with Section 6-2-5 of this Chapter. (Ord. 2008-17, August 25, 2008)

6-2-4: UTILITY RATE SCHEDULE:

- A. The utility rate schedule for all properties subject to this ordinance shall be adopted annually by ordinance of the City Council. The utility rate schedule shall include, but not be limited to, the items set forth in Chapter 6-1-4 of the Otsego City Code.
- B. Base fees for utility services for residential and non-residential properties shall be charged for each Residential Equivalent Connection (REC) of the user calculated in accordance with the current version of the Metropolitan Council Environmental Services Procedures Manual or as otherwise determined by City Council decision. (Ord. 2008-07, Feb. 25, 2008)

6-2-5: DELINQUENT ACCOUNTS:

- A. A late payment fee of ten percent (10%) shall be assessed on the unpaid portion(s) on all accounts when payment of the balance is not postmarked or received by the due date. The unpaid portions and late payment penalty shall be due immediately. Additional late payment fees on the past due amount shall be added each billing period the account is delinquent. (Ordinance 2012-18, adopted December 10, 2012)

- B. City Utility Department may authorize an adjustment and/or payment plans for delinquent accounts for total delinquent amounts not exceeding \$5,000.00. A request for a payment plan shall be directed to the City Utility Department. The City will only authorize adjustments and/or payment plans on a case-by-case basis based upon the facts and circumstances of each account. The City Utility Department reserves the right to obtain City Council approval before authorization of an adjustment or payment plan is finalized. (Ord. 2007-13, September 24, 2007)
- C. For any account with a balance more than ninety (90) days past due, the assessment of unpaid fees, usage charges and late payments or discontinuance of service shall be in accordance with the following:
1. The first occurrence of a delinquent account within a twelve (12) month period shall be assessed to the property in accordance with the provisions of this Section.
 2. Subsequent delinquencies of an account previously assessed for non-payment shall be subject to the following procedures:
 - a. For residential properties, except those subject to Section 6-2-5.C.2.b of this Chapter, the City Council may, at its discretion, direct the Utility Department to commence the disconnection of services as provided for in Section 6-2-5.C.3 of this Chapter.
 - b. Where service is required to be provided by Section 7-11-8 of the City Code pertaining to rental of residential properties, the delinquent account shall be assessed to the property in accordance with the provisions of Section 6-2-5.C.3 of this Section and also issued an administrative Citation for violation of the City Code for each month that the account remains delinquent.
 - c. For all non-residential properties, the Utility Department shall commence the disconnection of services as provided for in Section 6-2-5.C.3 of this Chapter.
 3. The Utility Department shall issue a shut off notice by first class mail to the address on file for the account that shall state that if full payment is not made by the date specified said notice water service to the property shall be shut off at any time after the date stated in the shut off-notice for non-payment without further notice. (Ordinance 2012-18, adopted December 10, 2012)
- D. The shut-off notice shall contain the address and telephone number of the City Utility Department in charge of billing; that information shall be clearly visible and easily readable on the shut-off notice.

- E. A disconnection fee and a reconnection fee and an Account Delinquency Administration Fee as set forth in Section 2-4-2.J of the City Code, must be paid in addition to the outstanding delinquent balance together with current charges before water service will be restored. Payment under this section shall be in the form of credit card, cash or cashiers' check. Scheduling the reconnection of water service by the Utility Department may require as many as ten (10) days from the date payment is received. (Ordinance 2012-18, December 10, 2012)
- F. Unpaid charges on sewer and water accounts shall be certified to the Wright County Auditor without hearing and pursuant to Minn. Stat. 444.075, subd. 3.e with interest, penalties and any administrative charge as determined by the City Council. The administrative charge shall be set forth in the City of Otsego fee schedule which is duly adopted by Ordinance. (Ordinance 2012-12, adopted September 24, 2012)
- G. After adoption of the assessment roll by the City Council, the property owner shall have the following options:
1. To pay the delinquent amount listed on the adopted assessment roll, but without additional interest after adoption, within thirty (30) days of the date of adoption.
 2. To pay the certified charges as billed to them by Wright County on their property tax statements with a collection term of one (1) year.
- H. If the owner of a property feels that charges for utility accounts are improperly charged the following process shall be used to appeal the matter:
1. The property owner shall contact the Finance Department to determine if City staff may handle the problem.
 2. If the Finance Department cannot resolve the appeal, the property owner shall communicate the appeal to the City Clerk in writing including the account number and the nature of the problem and shall include any documentation that the customer wants considered.
 3. The City employee charged with appeals shall research account usage from the past and make inquiries of the appealing property owner.
 4. The City employee charged with appeals shall propose a written response to the appeal for approval by the City Administrator. The response shall be sent to the property owner who shall signify acceptance in writing.
 5. If the property owner is not satisfied by the written response, the property owner may appeal the matter in writing only to the City within thirty (30)

days after receipt of the City's written response. The appeal will be considered by the City Council within thirty (30) days after receipt of the written appeal. There will be no public hearing on the matter, but the City Council will determine the appeal based solely upon the consumer's submitted written appeal as well as any response or information provided by City staff. The City Council shall make the final determination on any appeal. (Ordinance 2012-12, adopted September 24, 2012)

- I. After the hearing, the certified roll, minus any payments, shall be delivered to the Wright County Auditor. (Ord. 2007-13, September 24, 2007)

6-2-6: WATER LINE CONNECTIONS:

- A. Every premises, which for the purposes of this Section may include more than one residential dwelling unit if approved by the City pursuant to a written agreement recorded with the property, connected to the municipal water system shall have the following:
 1. A separate service line connecting between the lateral service line and a separate meter.
 2. Each service line shall have a water service valve installed in accordance with the Engineering Manual. The water service valve shall be the property of the City but the property owner shall be responsible for maintaining it in working order and keeping it accessible at all times. The City retains the right to access the water service valve in the operation of the utility system as provided for by the City Code. Furthermore, the City shall not be liable for any damage resulting from the need to gain access to the water service valve or to the water service valve itself if any damage should occur as a result of the operation of the utility system pursuant to this Section or services provided at the request of the account owner. (Ordinance 2012-18, adopted December 10, 2012)
- B. No person, firm, or corporation shall hook up any water connection or meter to the City water line without first obtaining a permit therefore from the City. The initial connection and turn-on operation for any water system connection shall only be performed by a City employee or authorized agent.
- C. No person, firm, or corporation may hook up or service any water line connected to the City water system unless said person, firm or corporation is a plumber duly licensed under the laws of the State of Minnesota or the ordinances of the City.
- D. The connection charge imposed by the City for hookup to the municipal water system shall be set by a duly adopted ordinance of the Otsego City Council.

- E. Residential Equivalent Connections (RECs) will be established for non-residential users. The number of RECs per use will be per the current version of the Metropolitan Council Environmental Services Procedures Manual or will be otherwise determined by City Council decision.
- F. Each property shall connect to the City of Otsego water, sanitary sewer and stormwater system unless excepted by a City Council decision, resolution, or unless previous approval by the City Council. Specific exceptions may be made for single family residences with continued use of an existing well for irrigation purposes only after connection to City water. (Ord. 2007-13, September 24, 2007)
- G. Whenever any premises are connected to the city water system, there shall be maintained a complete physical separation between the city water supply system and any private water supply system so that it is impossible to intentionally or unintentionally allow any water produced by a private system to be introduced in the supply line of the city system.
- H. Lawn Sprinkler and Irrigation Systems.
 - 1. All lawn sprinkler systems and irrigation systems connected to the municipal water system, whether such systems are aboveground or underground, shall require a permit for connection and shall be installed in accordance with the provisions of this Section and Section 4-1-2 of the City Code.
 - 2. All lawn sprinkler systems and irrigation systems which are automatic or are equipped to operate automatically and which are connected to the municipal water system shall be equipped with a rain-detection device so as to prevent the system from operating during times of precipitation. (Ord. 2008-02, Feb. 11, 2008)
- I. Reduced-Pressure-Zone (RPZ) Backflow Preventer Monitoring Program:
 - 1. Requirements. RPZ monitoring requirements are established by the State of Minnesota Plumbing Code 4715:
 - a. Testing and inspection completed by a qualified person at least annually and overhauls not to exceed five (5) years.
 - b. A test inspection tag must be affixed to the device including the date, signature and tester identification number.
 - c. Design plans including sizing and location of these devices are required to be kept on file with the City of Otsego.

- d. Change of use to an establishment will require verification of proper sizing and functionality.
2. Inspection and Rebuild Reports:
- a. Copies of inspections and maintenance records shall be sent to “Otsego City Hall Attn: RPZ Program” by July 1st annually as a means of determining compliance.
 - b. Information to be include on the report shall include:
 - 1. Address and location of RPZ.
 - 2. RPZ serial number.
 - 3. Date of service.
 - 4. Type of service (Inspection or Rebuild).
 - 5. License number and signature of the certified tester. (Ord. 2011-10, July 25, 2011)

6-2-7: METERS:

- A. All water consumption shall be measured by a City-provided meter. Meters shall be supplied to customers at a price determined by the City.
- B. Except for the extinguishment of fires, no person other than an authorized City employee shall use water from the City water system unless the water passes through a meter supplied by or approved by the City. No person not authorized by the City shall connect, disconnect, take apart, or in any manner change or interfere with any such meter or its use.
- C. Every water meter shall be installed pursuant to City specifications.
- D. Authorized meter readers and repair personnel shall have free access at reasonable hours of the day to all parts of every building and premises connected with the City water supply system in order to read meters, make inspections and make repairs. Denial of such access may result in water service being shut off.
- E. The property owner or builder shall pay for the initial water meter(s) installed at each property. After such initial purchase and installation of the water meter(s), the City shall maintain and repair, at its expense, any meter that has become unserviceable through ordinary wear and tear and shall replace the meter if

necessary. Where repair or replacement is made necessary by act or neglect of the owner or occupant of the premises, any City expense caused thereby shall be a charge against and collected from the water consumer, and water service may be discontinued until the cause is corrected and the amount charged is paid.

- F. When a consumer complains that a bill for any past water consumption and use is excessive, the City shall have the meter re-read upon the consumer's written request. If the consumer remains dissatisfied, the consumer may, upon written request, have the meter tested. If the test shows an error in the City's favor exceeding five percent (5%) of water consumed, a new meter shall be installed, and the bill shall be adjusted accordingly. If the test shows an error in the customer's favor exceeding five percent (5%) of the water consumed, such adjustment shall not extend back more than the last billing period from the date of the written request. The result of any test shall be reported to the owner or consumer in every case.
- G. If the City becomes aware of an error for any past water consumption or billing in the property owner's favor, the City will reimburse the property owner for the amount paid in error. Adjustments shall not extend back more than six (6) years from the date of notice of the error.
- H. If the City becomes aware of an error for any past water consumption or billing in the City's favor, the City may correct said error and collect unpaid amounts from Owner for water service provided. In that event the City shall provide owner with documentation and an explanation of the error and the adjustment shall not extend back more than six (6) years from the date of notice of the error and the City shall provide for a payment plan.
- I. The City reserves the right to remove and/or replace meters as to size and type when deemed necessary by the City. (Ord. 2007-13, September 24, 2007)

6-2-8: SERVICE PIPES; RESPONSIBILITY FOR REPAIRS:

- A. The service pipe from the water main to the meter and the connections thereto shall be the property of the consumer. The pipe must be protected and maintained by the consumer. In the event the consumer fails to make any necessary repairs to the service connections or pipe within 24 hours after being notified to do so by the City, the City shall disconnect the premises from City water.
- B. The cost of all repairs and replacement of any plumbing or service pipes between the property and the main city utility line(s) shall be borne entirely by the owner of the property affected, and if such repair or replacement work is performed by the City, the cost of time and material shall be assessed against the owner of the affected property. (Ord. 2007-13, September 24, 2007)

6-2-9: CITY LIABILITY: The City shall not be liable for any damages resulting from stoppage of the supply or flow of water as the result of breaks in any mains, service pipes or fixtures, by reason of the breaking of machinery or stoppage for necessary repair or any other interruption of service. (Ord. 2007-13, September 24, 2007)

6-2-10: FIRE HYDRANTS:

- A. No person, except a person authorized by the City, shall be allowed to use any fire hydrant in the City for any purpose whatsoever without first securing a permit from the City. Payment for the water used, except for firefighting, shall be made in accordance with the rate schedule duly adopted by the City Council. (Ord. 2007-13, September 24, 2007)
- B. The owner and/or occupant of any property adjacent to a fire hydrant shall be responsible for the fire hydrant being visible and accessible from the public street including, but not limited to, removal of landscaping, grass, weeds, snow, ice and/or rubbish. (Ord. 2008-02, Feb. 11, 2008)

6-2-11: DISCONTINUED SERVICE:

- A. A property owner desiring to discontinue the use of City water shall notify the City to that effect in writing. Discontinuation of City water services shall require:
 - 1. A fee for disconnection of water service as set forth by Section 2-4-2 of the City Code shall be paid.
 - 2. All unpaid fees, usage charges and late payment penalties are paid.
 - 3. Service shall be maintained to a residential property occupied as a rental dwelling unit in accordance with Section 7-11-8 of the City Code.
 - 4. Subject to the provisions of this section, service shall be shut off at the curb stop box by City authorized personnel and no unauthorized person shall otherwise shut off water service.
- B. Where City water has been turned off, it will be turned on only when:
 - 1. A fee is paid; and
 - 2. All unpaid fees, usage charges and late payment penalties are paid. (Ord. 2007-18, Nov. 13, 2007)

C. In addition, water service may be shut off at any stop box connection whenever:

1. The owner or occupant of the premises served or any person working on any pipes or equipment thereon which are connected with the water system has violated or threatens to violate any of the provisions of this Ordinance;
2. Any charge for water, service, meter or any other financial obligation imposed on the present or former owner or occupant of the premises served is unpaid and in default; and
3. Fraud or misrepresentation by the owner or occupant of the premises served in connection with any application for service. (Ord. 2007-13, September 24, 2007)

6-2-12: PENALTY: Violation of a provision of this Ordinance is a misdemeanor and, upon conviction thereof, a person may be punished by a fine of not more than one thousand dollars (\$1,000.00), or such other amount set by law, or imprisonment for a term not to exceed ninety (90) days, or such other term set by law, or both, but in either case, the costs of prosecution may be added. Each act of violation and each day on which a violation occurs or continues is a separate violation. The provisions of this Section notwithstanding, no penalty shall be greater than that established by state statute for the same offense. The City reserves the right to enforce the terms and conditions of this ordinance by use of Administrative Enforcement procedures or any applicable action in law or equity. (Ord. 2007-13, September 24, 2007)

6-2-13: REPEAL:

- A. Chapter 6, Sections 2 and 3 of the Otsego City Code (which codified City of Otsego Ordinances #00-11 (June 26, 2000) and #00-12 (June 26, 2000)) are hereby repealed in their entirety.
- B. Any other ordinances or parts of ordinances in conflict with this Ordinance are to the extent of such conflict hereby repealed. (Ord. 2007-13, September 24, 2007)

SECTION 3

SANITARY SEWER USE AND OPERATIONS

Section:

6-3-1	Purpose
6-3-2	Scope
6-3-3	Definitions
6-3-4	Permit and Permit Fee
6-3-5	Connection Requirements
6-3-6	Abatement of Violations
6-3-7	Prohibited Discharges
6-3-8	Pretreatment
6-3-9	Monitoring Facilities
6-3-10	Reporting Requirements
6-3-11	Fats, Oils, Grease and Flammables
6-3-12	Private Sewage Disposal System Required
6-3-13	Special Agreements Permitted
6-3-14	Penalty
6-3-15	Severability

6-3-1: PURPOSE: The purpose of this Section is to provide for the optimum public use of the City's wastewater collection and treatment facilities through the regulation of sewer construction, sewer use and industrial wastewater discharges; to provide for the distribution of the City's costs for ownership, operation and maintenance of the wastewater collection and treatment facilities necessary for protection of public health and environment; and to meet the applicable regulatory requirements that may be imposed on the City now or in the future. (Ord. 2008-02, Feb. 11, 2008)

6-3-2: SCOPE:

- A. This Section shall be interpreted in accordance with the definitions set forth in Section 6-3-3 of the City Code.
- B. The provisions of this Section shall apply to direct and/or indirect wastewater discharge to the City's facilities. This Section provides for regulation of sewer construction that will contribute to the City's facilities, quantity and quality of wastewater discharges, industrial wastewater pretreatment requirements, establishment of fees for the distribution of costs for ownership, operation and maintenance of the collection and treatment facilities, the approval of plans and/or specifications for sewer construction, issuance of permits for industrial wastewater discharge, miscellaneous permits, and establishment of appropriate enforcement actions for violations of this Section. (Ord. 2008-02, Feb. 11, 2008)

6-3-3: DEFINITIONS:

A. For use in this Section, the following terms are defined:

Act or The Act: Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

Authorized Representative: The individual designated by the City Council with authority to act on the City's behalf in regard to a specific issue.

Average Daily Flow: The volume of flow compiled over a given period of time and converted to a daily average by dividing the total flow by the number of days represented in the time period for which data has been compiled. Where individual day's flow readings are recorded, the average will be based on the number of days for which flows are recorded and not necessarily the total number of days in the time period. For computing average daily flow for industrial users, only production days shall be included in the computation. Weekends and/or holidays, shutdowns, etc., shall not generally be considered by the City in computing the Average Daily Flow.

Average Daily Loading: The measure of a particular constituent generally BOD, TSS and/or TKN compiled over a period of time and converted to a daily average by dividing the cumulative concentration and/or volume of the constituent by the number of days represented in the time period for which data has been compiled. Where individual day's loadings are recorded, the average shall be based on the number of days for which loadings are recorded and not necessarily the total number of days in the time period. For computing average daily loadings for industrial users, only production days shall be included in the computation. Weekends and/or holidays, shutdowns, etc., shall not generally be considered by the City in computing the Average Daily Loading.

Basic Wastewater Charge: The monthly charge based on volume of flow by a contributor which is intended to recover the cost of operation and maintenance of the City's share of POTWs and associated programs.

Billable Flow: The volume of wastewater generated by a user as measured by a water meter or other approved metering system.

Biosolids/Sludge: The solids, semi-solids, residues and/or precipitates that result from the treatment of wastewater.

Bypass: The diversion of wastewater from or around any portion of the collection system and/or treatment facility.

Categorical Pretreatment Standards: The national pollutant discharge limits promulgated by EPA in accordance with Section 307(b) and (c) of the Clean Water Act, which apply to specific categories of industrial users (40 CFR 403.6 and 405-471). Unless noted otherwise. Categorical Pretreatment Standards shall always refer to the latest approved limits.

CBOD (Carbonaceous Biochemical Oxygen Demand): That portion of the BOD attributable to the biochemical oxidation of the carbonaceous organic matter. This is determined through standard laboratory analyses using a nitrification inhibitor in performing the BOD test, and generally expressed in mg/l.

City Engineer: The City Engineer of the City and is an individual/company designated by the City Council with the authority to act on the City's behalf in specific issue(s).

COD (Chemical Oxygen Demand): The quantity of oxygen used in the chemical decomposition of organic matter in wastewater as determined by the appropriate laboratory procedure, usually expressed in mg/l.

Combined Sewer: A sewer that receives both sanitary sewage and storm sewage.

Composite Sample: The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.

Contributor/Discharger/or User: Any person, firm, corporation or other entity or organization responsible for the production of domestic, commercial or industrial wastewater which is discharged to the wastewater collection and treatment system.

Cross Connection: A connection between a storm drain system and a sanitary collection system, and/or a connection between two sections of a collection system to handle anticipated overloads of one system.

Current License: One which is current, valid, unsuspended and unrevoked.

Debt Service: The funds necessary to recover annual principal and interest payments for bonds issued for the wastewater system.

Demand Charge: The charge which recovers debt service costs associated with the wastewater treatment system.

Director: The individual or company appointed by the City Council as the Public Utilities Director of the City of Otsego with the authority to act on the City's behalf in specific issue(s).

Domestic User: The discharge of wastewater originating in a residential facility or dwelling. In this use, it means the type and quantity of wastes are different from commercial and industrial or agricultural wastes.

Domestic Wastewater: Household type wastes discharged from places of human habitation, including sanitary convenience, kitchen and laundry waste. Domestic strength wastewater is accepted as having the following strengths, or less:

BOD – 300 mg/l
TKN- 30 mg/l
FOG – 100 mg/l

TSS – 350 mg/l
NH3-N – 15 mg/l

Effluent: Discharge from a particular facility, unit, treatment process or system.

Effluent Limits/Effluent Standards: The numerical limits on pollutants in effluents generally reported in mg/l or lbs./day.

Foundation Drain or Footing Drain: The piping system around the foundation of a structure or building which is intended to carry groundwater away from the structure to relieve hydraulic pressure and help keep the structure walls dry. This may also refer to the sump pump used in the footing drain system, where applicable.

Grab Sample: A single sample which is taken from a waste stream without regard to the flow in the waste stream and without consideration of time.

Gravity Sewer: A sewer that flows by the force of gravity, and generally operates hydraulically as an open channel.

Gravity Separation Interceptor: A facility designed for removal of dangerous, deleterious or prohibited matter from the waste stream by differential gravity separation (i.e., grease traps and/or catch basins).

Hazardous Waste: Waste defined as hazardous by 40 CFR part 261.

House Service Connection/Building Sewer: The sewer connection from the house/building plumbing system to a lateral or branch sewer. The building sewer may begin at the outside of the building's foundation wall. Also called a house connection or service connection.

Industrial User: Source of discharge of wastewater into a POTW from any source other than a domestic user.

Industrial Wastewater: Wastewater and water-borne wastes of the community, excluding domestic wastewater and uncontaminated water and includes all wastewater from any production, manufacturing, processing, institutional, commercial, agricultural or other operation where the wastes discharged include significant quantities of wastes from non-domestic sources.

Inspector: An authorized representative of the Public Utilities Department, Public Works Department, Building Inspection Department, City Engineer or other individual authorized by the Otsego City Council.

Interceptor Sewer: A public sewer which generally collects wastewater from lateral sewers and transports it to another interceptor, pumping station or treatment facilities.

Interference: means a discharge, alone or in conjunction with discharges from other sources, which:

- A. Inhibits or disrupts a POTW, its treatment process or operations, or its sludge process, use or disposal; and/or
- B. Causes a violation of any requirement of the PTOW's NPDES permit (including an increase in magnitude of duration of a violation) or prevents sewage sludge use or disposal in accordance with Section 405 of the Act, or any criteria, guidelines or regulations of EPA or MPCA.

Jurisdictional Limits: The area within the corporate limits of the City and all of the territory outside the corporate limits of the city which is within one (1) mile of the corporate limits but exclusive of that part of such territory which lies within the corporate limits of another city, town or village.

Lateral Sewer Sewer: A public sewer which generally collects wastewater from house sewers and /or industrial sewers and transports it to an interceptor sewer.

Local Government: The Mayor and Council of the City.

Milligram Per Liter (mg/l): The measure of concentration of a substance in a liquid generally accepted to equal parts per million.

New Source: (as defined in 40 CFR 403.3 (k)):

- A. Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 2. The building, structure, facility, or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or
 3. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- B. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection A (2) or (3) above but otherwise alters, replaces, or adds to existing process or production equipment.
- C. Construction of a new source as defined under this section has commenced if the owner or operator has:
1. Begun, or caused to begin, as part of a continuous on site construction program, any placement, assembly, or installation of facilities or equipment; or significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 2. Entered into a binding contractual obligation for the purchase of facilities or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

NPDES Permit (National Pollutant Discharge Elimination System Permit): A permit issued pursuant to Section 402 of the Act.

Pass Through: A discharge which exits a POTW into a water of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any of the requirements of a POTW's NPDES permit (including an increase in the

magnitude or duration of a violation) or other permit issued to the POTW by the MPCA or USEPA.

Ph: means the negative logarithm of the hydrogen ion activity. It generally refers to a measure of the acidity of a solution; Ph 7 is neutral, Ph>7 is alkaline and Ph<7 is acidic.

Pretreatment: The reduction of pollutants or conditioning of the waste stream to enhance treatability prior to discharge to a POTW for treatment.

Public Sewer: means a sewer constructed for public use under the control of the City.

Publicly Owned Treatment Works (POTW): The system of public sewers, pumping facilities and treatment facilities used to collect, convey and treat wastewater and manage wastewater sludges which is owned, managed and regulated by the City or its authorized representative.

POTW Treatment Plant: The treatment works portion of a POTW.

Rendering establishment: Any establishment, plant, or premises at or within which dead animals, dead fowls, fish, inedible offal, meat scraps, bones, suet, feathers, unrendered animal fat, waste cooking greases, and similar animal matter, or the transportation of such matter to and from disposal at a rendering establishment, either as a separate business or in connection with any other established business.

Sanitary Sewer: A sewer which is intended to transport wastewater and to which storm sewage, surface water and groundwater are not intentionally connected.

Sewer System: A network of wastewater collection, conveyance, pumping, treatment and disposal facilities connected with sewers and owned and controlled by the City.

Significant Industrial User: An industrial user meeting any of the following criteria:

- A. Discharges more than 25,000 gallons per day of process wastewater
- B. Discharges a process wastewater which makes up 5 percent or more of the hydraulic or organic capacity of a POTW.
- C. Is designated as significant by the Director because the discharge may adversely affect the operation of a POTW or for violating any pretreatment requirement.

D. Any industrial user subject to Categorical Pretreatment Standards.

Significant Noncompliance:

- A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of wastewater measurements taken during a six month period exceed, by any amount, the daily maximum limit or average limit for the same pollutant parameter;
- B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of wastewater measurements taken for each pollutant parameter during a six month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, Oil and Grease, and 1.2 for all other pollutants except Ph);
- C. Any other discharge violation the Director believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of any POTW's personnel or the general public;
- D. Any discharge of pollutants that have caused imminent endangerment to the public or to the environment, or has resulted in the Director exercising emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge pretreatment agreement or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance; or
- H. Any other violation(s) which the Director determines will adversely affect the operation or implementation of the local pretreatment program.

Sludge/Biosolids: Solids, semi-solids, residues and/or precipitates that result from the treatment of wastewater.

Standard Industrial Classification (SIC): A classification of industrial facilities in accordance with the Standard Industrial Classification Manual issued by the Office of Management and Budget or, whatever officially replaces it.

Suspended Solids (SS): Solids that float on the surface or are in suspension in wastewater which can be removed through standard laboratory filtering.

Total Kjeldahl Nitrogen (TKN): The measure of nitrogen in wastewater determined in a laboratory by measuring ammonia after digesting organic nitrogen to convert it to ammonia nitrogen.

Toxic Pollutant: Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Environmental Protection Agency.

User Charge: Rates, charges and fees charged to contributors for use of a POTW.

Wastewater/Sewage: A combination of water-borne wastes from residences, businesses, institutions and industrial facilities, along with the groundwater and surface runoff that may be present, which is discharged to a POTW.

Wastewater Collection System: Network of sewers and pumping stations which collect wastewater from individual building sewers and convey it to the treatment facilities.

Wastewater Treatment Facilities/Water Pollution Control Facilities: A system of unit processes which function to reduce pollutant discharges, and therefore, receiving water pollutant loading through physical, chemical and/or biological processes.

B. The following abbreviations shall have the designated meaning:

BOD	Biochemical Oxygen Demand
CBOD	Carbonaceous Biochemical Oxygen Demand
CFR	Code of Federal Regulations
CFS	Cubic Feet Per Second
COD	Chemical Oxygen Demand
EPA	Environmental Protection Agency
FOG	Fats Oils Grease
GPD	Gallons Per Day
GPM	Gallons Per Minute
ISTS	Individual Sewage Treatment System
MPCA	Minnesota Pollution Control Agency
mg	Milligram
mg/l	Milligrams Per Liter
MGD	Million Gallons Per Day
NH3-N	Ammonia Nitrogen
NPDES	National Pollutant Discharge Elimination System
POTW	Publicly Owned Treatment Works

PPM	Parts Per Million
RCRA	Resource Conservation and Recovery Act
SIC	Standard Industrial Classification
SIU	Significant Industrial User
TKN	Total Kjeldahl Nitrogen
TSS	Total Suspended Solids
WPCF	Water Pollution Control Facilities
WWTF	Wastewater Treatment Facility
ng/L	Nanograms per Liter (Ord. 2008-02, Feb. 11, 2008)

6-3-4: PERMIT AND PERMIT FEE:

- A. No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City.
- B. The application for the permit shall set forth the location and description of the property to be connected with the sewer system and the purpose for which the sewer is to be used, and shall be supplemented by any plans, specifications, or other information considered pertinent.
- C. The permit shall require the applicant to complete construction and connection of the building sewer to the public sewer within ninety (90) days after the issuance of the permit, except that when the applicant makes sufficient showing that due to conditions beyond the applicant's control or due to peculiar hardship, such time period is inequitable or unfair, an extension of time within which to comply with the provisions herein may be granted.
- D. Any sewer connection permit may be revoked at any time for a violation of this Section.
- E. The applicant shall pay a fee to the City as established in Section 2-4-2 of the City Code to cover the cost of issuing the permit and supervising, regulating and inspecting the work. (Ord. 2008-02, Feb. 11, 2008)

6-3-5: CONNECTION REQUIREMENTS: Any connection with a public sanitary sewer shall be performed consistent with the City of Otsego Engineering Manual (adopted March 1999 and subsequent revisions). (Ord. 2008-02, Feb. 11, 2008)

6-3-6: ABATEMENT OF VIOLATIONS: Construction or maintenance of building sewer lines whether located upon the private property of any owner or in the public right-of-way, which construction or maintenance is in violation of any of the requirements of this chapter, shall be corrected, at the owner's expense, within thirty

(30) days after date of official notice from the Council of such violation. If not made within such time the Council shall, in addition to the other penalties herein provided, have the right to finish and correct the work and assess the cost thereof to the property owner. Such assessment shall be collected with and in the same manner as general property taxes. (Ord. 2008-02, Feb. 11, 2008)

6-3-7: PROHIBITED DISCHARGES: No person shall discharge or cause to be discharged, either directly or indirectly, any wastewater which, in the opinion of the Director, may have any harmful effect on the sewer system, any POTW's personnel or equipment, effluent quality, sludge quality, public or private property, or may otherwise endanger the public, a POTW, the environment or create a public nuisance. The Director, in reviewing the acceptability of specific wastewater, shall consider the characteristics of the wastewater and the adequacy and characteristics of any POTW to accept the wastewater.

A. **General Discharge Prohibitions.** No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of any POTW. These general prohibitions apply to all such users of a POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements. A user may not contribute the following substances to a POTW:

1. Any liquids, solids, or gases with a closed cup flashpoint of less than 140 degrees F (60 degrees C) using test methods referenced in 40 CFR 261.21 or which, by reasons of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion hazard or be injurious in any other way to a POTW or to the operation of a POTW. At no time shall two (2) successive readings on an explosimeter at any point in the system be more than five (5) percent nor any single reading over ten (10) percent of the lower explosive limit (LEL) of the meter.
2. Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with a POTW.
3. Any wastewater having a Ph less than five (5.0) or higher than nine (9.0), or wastewater having any other corrosive property capable of causing damage of hazard to structures, equipment and/or personnel of a POTW.
4. Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of a POTW, or to exceed the limit set forth in a categorical pretreatment standard. A toxic pollutant

shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act.

5. Any noxious or malodorous liquids, gases, or solids which 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 maintenance and repair.
6. Any substance which may cause a POTW's effluent, or any other product of a POTW, such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to a POTW cause the POTW to be out of compliance with sludge use or disposal criteria, guidelines or regulations.
7. Any substance which will cause a POTW to violate its NPDES and/or state disposal system permit or the receiving water quality standards.
8. Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
9. Any wastewater having a temperature which will inhibit biological activity in a POTW resulting in treatment interference. Wastewater with a temperature at the introduction to a POTW which exceeds forty (40) degrees Celsius (one hundred four (104) degrees Fahrenheit) unless the POTW is designed to accommodate such temperature.
10. Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which will cause interference to a POTW. Industry shall coordinate with any connected POTW for the discharge of any slug load which may have the potential to cause interference with that POTW.
11. Any wastewater containing any radioactive wastes or isotopes of such half-life, or concentration as may exceed limits established by the Director in compliance with applicable state or federal regulations.
12. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference with POTW processes or pass through to the receiving waters.
13. Any wastewater which causes a hazard to human life or creates a public nuisance.
14. Mercury quantities in excess of ten ng/L.

- B. **Dilution of Discharges.** No user shall ever increase the use of process water for the purposes of attempting to dilute or to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the federal categorical pretreatment standards or in any other pollutant-specific limitation developed by the City, State or Federal Government.
- C. **Specific Limits.** In most cases, the concentration of amount of any particular constituent which will be considered excessive will depend upon the results of technical determinations and regulatory agency regulations. Limits and/or constituents to be subject to limits are subject to change based on POTW impacts, technical determinations and regulatory requirements. Specific local limits for pollutants to be allowed in the discharge to any Otsego Wastewater Treatment Facility are developed based upon the design limits of the respective POTW. When the Director determines that a user(s) is contributing to a POTW any of the substances identified in Section 6-3-8.B of the City Code in such amounts as to interfere with the operation of the POTW, the Director shall advise the user(s) of the impact of the contribution on the POTW, and require effluent limitation(s) for such user to correct the interference with the POTW. (Ord. 2008-02, Feb. 11, 2008)
- D. **Storm Water Prohibited.**
1. It shall be unlawful for any owner, occupant or user of any premises to direct into or allow any storm water, surface water, water from air conditioning systems or building sump pump systems, oil or other material hereafter excluded by the City to drain into the sanitary sewer system.
 2. Sump Pump Required:
 - a. All dwellings and other buildings and structures which require, because of the infiltration of water into basements, crawl spaces and the like, a sump pump system to discharge excess water, shall have a permanently installed discharge line which shall not at any time discharge water into the sanitary sewer system, except as otherwise provided herein.
 - b. A permanent installation shall be one which provides for year-round discharge capability to either the outside of the dwelling, building or structure, or to the storm sewer system.
 - c. Unless directly connected to the storm sewer system by an underground tile or line system, or some other verifiable means, it shall consist of:

1. A mechanical sump pump and discharge line which shall be constructed with rigid pipe (plastic, copper, galvanized or black pipe) one inch inside diameter minimum with a union or other approved coupling for easy disconnection for repair or replacement.
 2. The discharge line shall protrude to the outside to a permanently drilled hole or opening, and shall extend at least three feet outside of the foundation wall of the dwelling, building or other structure with a hose connection.
 3. The line leading from the sump pump shall have a connection on the outside of the dwelling, building or structure which shall prevent it from being pulled back in through the hole.
3. All discharges to the sanitary sewer system prohibited by this Section shall be immediately disconnected. (Ord. 2010-02, March 8, 2010)
4. Inspections:
- a. The Building Official, Public Utilities Supervisor, City Engineer or other authorized City staff shall at reasonable times be permitted to enter upon all properties connected to the sanitary sewer system for the purpose of an inspection and observation, to determine whether the requirements of this subchapter are being complied with.
 - b. A utility surcharge shall be established in Section 2-4-2.J of the City Code and charged to properties in accordance with Section 6-2-3 of the City Code for the following reasons:
 - (1) Non-compliance with the requirements of this subchapter not corrected within thirty (30) days after the date of an inspection by the City, unless extended by City staff due to issues with seasonal construction.
 - (2) Properties that have not complied with a request for an inspection within thirty (30) days of mailed notice by the City.
 - c. The City further reserves its rights to all criminal, civil or administrative actions necessary for the administration and enforcement of this subsection. (Ordinance 2014-14, adopted October 27, 2014)

- E. **Swimming Pools.** Swimming pools shall be equipped with facilities for completely emptying the pool and other drainage to the POTW. Discharge of the pool water to the POTW shall be at a rate not exceeding 250 gallons per minute. No direct connection shall be made to the sewer. The outlet from the pool recirculation system shall terminate at least six inches above the receptacle connected to the POTW. (Ord. 2008-02, Feb. 11, 2008)

6-3-8: PRETREATMENT: Users shall provide necessary wastewater treatment as required to comply with this Section and shall achieve compliance with all federal categorical pretreatment standards and schedules where applicable. Any non-domestic user of the any Otsego POTW may be required to have a pretreatment agreement and will be required to achieve certain pollutant discharge limits. If pretreatment is necessary to achieve these limits the facility constructed/installed to meet the limits shall be provided, operated and maintained the user/owner's expense.

- A. **Wastewater Discharge Permits.** Any violation of the terms and conditions of a wastewater pretreatment agreement shall be deemed a violation of this Ordinance and subjects the non domestic user to extra sewer charges and sanctions described in the agreement. Obtaining a pretreatment agreement does not relieve a user of its obligation to comply with all federal, state, or local laws. The wastewater pretreatment agreement may require pretreatment of industrial wastewaters prior to discharge to any Otsego POTW, flow equalization to reduce peak flows, discharge of certain wastes only to specific sewers, relocation of discharge points, prohibition of certain discharges, restriction of some discharges to specific hours of the day, payment of charges to defray costs that may be related to specific discharges, extra charges for discharges over limits, and other conditions that may be needed to implement activities consistent with the intent of these Sanitary Sewer chapters. No person shall discharge wastewater to any Otsego POTW in excess of the quantity or quality limits established in the wastewater pretreatment agreement. A schedule for complying with agreement requirements, effluent limits, self-monitoring requirements or other requirements deemed necessary by the Director shall be submitted to the City for approval by the non-domestic user in a time frame established by the Director. The Director may require compliance schedule progress reports, a report on final compliance with effluent limits and standards, and periodic reports on continued compliance. The Director may require a non-domestic user to submit to compliance independent of a compliance schedule.

- B. **Federal Categorical Pretreatment Standards.** Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this Code of Ordinances for sources in that subcategory, shall immediately supersede the limitations imposed under this Code of Ordinances. The Director shall notify all affected users of the applicable reporting requirements under 40 CFR, Section 403.12.

- C. **Federal Categorical Pretreatment Modifications.** Where the City's wastewater treatment system achieves consistent removal of pollutants limited by federal pretreatment standards, the City may apply to the approval authority for modification of specific limits in the federal pretreatment standards. Consistent removal shall mean reduction in the amount of a pollutant or alteration of the nature of the pollutant by the wastewater treatment system to a less toxic or harmless state in the effluent which is achieved by the system in ninety five (95) percent of the samples taken when measured according to the procedures set forth in Section 403.7(c)(2) of Title 40 of the Code of Federal Regulations, General Pretreatment Regulations for Existing and New Sources of Pollution promulgated pursuant to The Act. The City may then modify pollutant discharge limits in the federal pretreatment standards if the requirements contained in 40 CFR Section 403.7 are fulfilled and prior approval from the approval authority is obtained. (Ord. 2008-02, Feb. 11, 2008)

6-3-9: MONITORING FACILITIES:

- A. The City may require to be provided, at the user's own expense, monitoring facilities to allow inspection, sampling and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the City may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not interfere with traffic or be obstructed by landscaping or parked vehicles.
- B. There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, and sampling and measuring equipment shall be accessible to the City or its authorized representative at all times for the purpose of gathering samples and flow data. If the sampling manhole or facility is a confined space as defined by federal or state OSHA the user shall supply equipment to safely enter the confined space.
- C. Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the City's requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the City. (Ord. 2008-02, Feb. 11, 2008)

6-3-10: REPORTING REQUIREMENTS:

- A. **Compliance Reports.** Within ninety (90) days following the date for final compliance with an applicable pretreatment agreement or, in the case of a new

source, following commencement of the introduction of wastewater into any Otsego POTW, any user subject to a pretreatment agreement shall submit to the Director a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment agreement and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment agreement. The report shall state whether the applicable pretreatment standards or requirements can be met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user and certified by a qualified professional.

- B. **Other Reports.** The Director may require reports from non domestic/industrial users as necessary, including, but not limited to, the reports required by 40 CFR 403.12.
- C. **Record Keeping.** All industrial users required to have an individual pretreatment agreement subject to reporting requirements shall retain in accordance with the City's record retention schedule, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Section and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. (Ord. 2008-02, Feb. 11, 2008)

6-3-11: FATS OILS GREASE AND FLAMMABLES: In addition to other provisions of this Section, the following regulations shall apply to non-domestic users regarding the discharge of fats, oils, grease and flammables to the POTW:

- A. The discharge of fats, oils, grease or flammable materials into the POTW shall be prohibited. (Ordinance 2011-03, adopted January 24, 2011)
- B. Interceptors and Separators Required:
 - 1. Users with potential discharge of FOG and flammables shall install interceptors and separators in accordance with Minnesota Plumbing Code 4715 subject to review and approval of the Building Official.
 - 2. Any change of use within an existing building shall comply with the provisions of this Section. (Ordinance 2015-05, adopted July 25, 2015)

C. Maintenance.

1. Users shall maintain separators and interceptors on a schedule based on the individual user's operation to ensure proper function and prevent discharge of FOG and flammables to the POTW.
2. The Utilities Supervisor may require modification of the maintenance schedule or additional maintenance of a user's separator and interceptor system if there is discharge of FOG and flammables to the POTW. (Ordinance 2011-03, adopted January 24, 2011)

D. Reporting:

1. Any user required to provide pretreatment for FOG and flammables shall submit to the Utilities Department a report outlining ongoing maintenance of the interceptor and separator system at least annually but within thirty (30) days of any service. (Ordinance 2015-05, adopted July 25, 2015)
2. The report shall state any and all operation and maintenance service that has been completed to the interceptor and separator system such that the user is in compliance with the applicable pretreatment standards or requirements and include the following information:
 - a. Date of maintenance.
 - b. Volume of FOG or flammables hauled from the site.
 - c. Identification of the firm or individual completing the maintenance and/or hauling.
 - d. Any comments or issues identified by the maintenance provider.
 - e. Other information as required by the Building Official, Utilities Supervisor or City Engineer.
3. This statement shall be signed by an authorized representative of the user and certified by a qualified professional. (Ordinance 2011-03, adopted January 24, 2011)

E. Inspections:

1. The interceptor and separator systems for non-domestic users shall be inspected by the Utilities Supervisor or their designee a minimum of every two (2) years based on a schedule determined by the Utilities Supervisor.

2. The Building Official, Utilities Supervisor or City Engineer or their designee may enter upon private property at any time for the purpose of inspecting interceptor and separator systems.
- 3 Inspections shall be scheduled by the Utilities Department and shall require payment of any fee established in Section 2-4-2 of the City Code. (Ordinance 2015-05, adopted July 25, 2015)

6-3-12: INDIVIDUAL SEPTIC TREATMENT SYSTEM REQUIRED: All houses, buildings or properties which are required by this Section or by other authority to have sanitary wastewater facilities and are located where a POTW is not available shall be equipped at the owner's expense, with suitable wastewater facilities connected to a private wastewater disposal system which complies with the provisions of Chapter 4, Section 3 of the Otsego City Code. (Ordinance 2011-03, adopted January 24, 2011)

6-3-13: SPECIAL AGREEMENTS PERMITTED: No statement in this Section shall be construed as preventing a special agreement, arrangement or contract between the City Council and any POTW user as to special conditions, rates and costs as established by the City Council. (Ordinance 2011-03, adopted January 24, 2011)

6-3-14: PENALTY: Any person violating any provision of this chapter shall be punished pursuant to applicable State Statute regarding misdemeanor penalties, as amended, plus the costs of prosecution. The City may, in its discretion, seek any administrative or civil remedies available to it as well, including administrative fines, injunctive relief or abatement. Each right or remedy accruing to the City under this ordinance or at law is separate and distinct and may, in the City's discretion, be exercised independently or simultaneously with any other right or remedy. (Ordinance 2011-03, adopted January 24, 2011)

6-3-15: SEVERABILITY: Should any subdivision, section, paragraph, provision, sentence or lesser portion of this chapter be found invalid by a court of competent jurisdiction, then such invalid portion shall be severed from this chapter and all remaining subdivisions, sections, paragraphs, provisions and sentences contained in this ordinance shall remain in full force and effect. (Ordinance 2011-03, adopted January 24, 2011)

SECTION 4

SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS

Section:

6-4-1	Purpose
6-4-2	Projects Eligible For Assessment
6-4-3	Initiation of Public Improvement Projects
6-4-4	Public Improvement Procedure
6-4-5	Financing of Public Improvements
6-4-6	Deferment of Special Assessments

6-4-1: PURPOSE.

- A. The procedures used by the City for levying special assessments are those specified by various sections of Minnesota Statutes that provide that all or a part of the cost of public improvements may be assessed against benefiting or affected properties.
- B. Three following criteria must be satisfied before a particular parcel can be assessed:
 - 1. The land must have received special benefit from the improvement.
 - 2. The amount of the assessment must not exceed the special benefit.
 - 3. The assessment must be uniform in relation to the same class of property within the assessment area.
- C. The City has adopted an Assessment Policy that includes specific criteria for different improvements and that may be amended by the City Council from time to time. (Ordinance 2013-04, adopted January 28, 2013)

6-4-2: PROJECTS ELIGIBLE FOR SPECIAL ASSESSMENT.

- A. The following public improvements and related acquisition, construction, extension, and maintenance of such improvements are eligible for special assessment within the City as projects approved at the discretion of the City Council as may be authorized pursuant to Minnesota Statutes §429.021, Subd. 1 and §459.14, Subd. 7:
 - 1. To acquire, open, and widen any street, and to improve the same by constructing, reconstructing, and maintaining sidewalks, pavement,

gutters, curbs, and vehicle parking strips of any material, or by grading, graveling, oiling, or otherwise improving the same, including the beautification thereof and including storm sewers or other street drainage and connections from sewer, water, or similar mains to curb lines.

2. To acquire, develop, construct, reconstruct, extend, and maintain storm and sanitary sewers and systems, including outlets, holding areas and ponds, treatment plants, pumps, lift stations, service connections, and other appurtenances of a sewer system, within and without the corporate limits.
3. To install, replace, extend, and maintain street lights and street lighting systems and special lighting systems.
4. To acquire, improve, construct, reconstruct, extend, and maintain water works systems, including mains, valves, hydrants, service connections, wells, pumps, reservoirs, tanks, treatment plants, and other appurtenances of a water works system within the corporate limits.
5. To acquire, improve and equip parks, open space areas, playgrounds, and recreational facilities within the corporate limits.
6. To plant trees on streets and provide for their trimming, care, and removal.
7. To abate nuisances and to drain swamps, marshes, and ponds on public or private property and to fill the same.
8. To construct, reconstruct, extend, and maintain dikes and other flood control works.
9. To construct, reconstruct, extend, and maintain retaining walls and area walls.
10. To acquire, construct, reconstruct, extend, operate, maintain, and promote underground pedestrian concourses.
11. To acquire, construct, improve, alter, extend, operate, maintain, and promote public malls, plazas or courtyards.
12. To acquire, construct, reconstruct, improve, alter, extend, and maintain highway sound barriers.
13. To acquire real property needed for providing, regulating and operating on-street or off-street parking lanes or areas, to purchase or lease parking meters or other parking or traffic-control devices or may construct, or

otherwise provide, equip, maintain and operate automobile parking facilities.

B. The City is also authorized by this Section adopted pursuant to Minnesota Statutes §429.101 to recover through special assessment the following special charges as a special assessment against the property benefited for all or any part of the cost of:

1. Snow, ice, or rubbish removal from sidewalks.
2. Weed elimination from streets or private property.
3. Installation or repair of water service lines, street sprinkling, sweeping, or other dust treatment of streets.
4. The trimming and care of trees and the removal of unsound trees from any street.
5. The treatment and removal of insect infested or diseased trees on private property.
6. The repair of sidewalks.
7. The operation of a street lighting system.
8. The operation and maintenance of a fire protection system.
9. The City may remove or eliminate of public health or safety hazards from private property excluding any structure included under the provisions of Minnesota Statutes §463.15 to §463.26.

C. The City in accordance with Minnesota Statutes §444.075, Subd. 1a finance the following projects related to Waterworks, stormsewer and sanitary sewer systems through a levy against affected properties:

1. Build, construct, reconstruct, repair, enlarge, improve, or in any other manner obtain these facilities within the corporate limits.
2. Acquire any and all land and easements required for the facilities
3. Following the adoption of an ordinance under Minnesota Statutes §444.16 to §444.21, the City may acquire, construct, reconstruct, extend, maintain, and otherwise improve storm sewer systems and related facilities within the Stormwater District. Storm water holding areas and ponds within and without the municipality may also be acquired, constructed, maintained, and improved for the benefit of any such district. The cost of the systems

and facilities described in this subdivision may be recovered by the tax authorized in Minnesota Statutes §444.20. (Ordinance 2013-04, adopted January 28, 2013)

6-4-3: INITIATION OF PUBLIC IMPROVEMENT PROJECTS: Public improvement projects can be initiated in the following ways:

A. Petition:

1. Public improvement projects may be initiated by petition of owners of the property benefitted by the proposed improvement.
2. Public improvements also may be initiated by majority vote of the City Council when, in its judgment, such action is required including projects necessary to protect public health safety and welfare from an imminent threat.

B. Ordering Improvements:

1. Statute §429 Assessment Projects:

- a. A resolution ordering any improvements initiated by the City Council or by owners of less than thirty five (35%) percent of benefiting property owners shall require a four-fifths majority vote of all members of the City Council.
- b. A resolution ordering any improvements initiated by owners of not less than thirty five (35%) percent of benefiting property owners shall require a majority vote of all members of the City Council.
- c. A resolution ordering any improvements initiated by petition of all owners of benefiting properties waiving all hearing procedures and appeals and assessing the entire cost against their property, may be adopted without a public hearing.

2. Statute §444 Assessment Projects:

- a. A resolution ordering any improvements initiated by the City Council or by owners fifty (50) percent or less of benefiting property owners shall require a four-fifths majority vote of all members of the City Council.
- b. A resolution ordering any improvements initiated by owners of more than fifty (50%) percent of benefiting property owners defined in Section 6-4-3.A of this Chapter requires a majority vote of all members of the City Council.

- c. A resolution ordering any improvements initiated by petition of all owners of benefited or affected properties, specifically waiving public hearing procedures and assessing the entire cost against their properties, may be adopted without a public hearing.
3. The City Council may consider the petition of a Developer to construct the improvements within a project under their control and authority and assess them subject to the Developer agreeing to a waiver of a hearing and a waiver of appeal in a form approved by the City Attorney with said improvements to be ordered by a majority vote of the City Council. (Ordinance 2013-04, adopted January 28, 2013)

6-4-4: PUBLIC IMPROVEMENT PROCEDURE: The following is the general procedure followed by the City Council for all public improvement projects from initiation of such a project through certification of the assessment roll to the County Auditor. Formats for the various reports and resolutions referenced in this section are made a part of the policies and procedures of the City.

- A. The petition is submitted to the City Clerk together with an agreement approved by the City Attorney and signed by the petitioners to pay all costs related to the consideration of the petition including preparation of a feasibility report.
- B. City staff shall review the petition to verify authenticity or Developer's request and present a request for action to the City Council.
- C. The City Council, upon review of the petition or request, shall accept or reject the petition or request:
 1. If based upon a petition, the City Council shall adopt a resolution declaring whether the required percentage of property owners has signed.
 2. If the petition or request is accepted, the City Council by resolution shall order preparation of a feasibility report.
- D. Preparation and Consideration of a Feasibility Report.
 1. The City Engineer shall prepare the feasibility report which shall preliminary evaluate whether the proposed improvement is necessary, cost-effective, and feasible and whether it should be made as proposed or in conjunction with another project.
 2. The feasibility report shall include:
 - a. An estimate of the cost of the improvement as proposed.

- b. A reasonable estimate of the total amount to be assessed, and a description of the methodology used to calculate individual assessments for affected properties.
 3. If the report is not prepared by an employee of a municipality, the compensation for preparing the feasibility report must be based on the following factors:
 - a. The time and labor required;
 - b. The experience and knowledge of the preparer;
 - c. The complexity and novelty of the problems involved; and
 - d. The extent of the responsibilities assumed.
 - e. The compensation must not be based primarily on a percentage of the estimated cost of the improvement.
 4. The City Council may refer the report to the Planning Commission for a recommendation.
 5. The City Council shall by resolution accept or reject the feasibility report, which, if accepted, the City Council by resolution call for a public hearing to consider the improvements unless the right to a hearing is waived by all affected property owners in a form approved by City Attorney.

E. Consideration of the Improvements.

1. The City Clerk shall post and publish hearing notice and mails notices to affected property owners as provided in Minnesota Statutes §429.031(a) or §444.18, Subd 3 as applicable.
2. City Council review and action:
 - a. The City Council shall conduct the public hearing.
 - b. The information presented at the public hearing shall include a preliminary assessment amount for each of the affected property owners.
 - c. Within six (6) months of the hearing date, the City Council shall adopt resolution ordering improvement to be constructed and advertisement of bids or reject the project.

- (1) Minnesota Statutes §429 Projects: If the City Council orders the improvement, City staff prepares final plans, advertises for and opens bids as provided in Minnesota Statutes §429.041, prepares bid tabulation, makes recommendation to City Council for award, and prepares proposed assessment roll.
 - (2) Minnesota Statutes §444 Projects: If the City Council orders the improvement, City staff prepares final plans, advertises for and opens bids as provided in Minnesota Statutes §471.345, prepares bid tabulation, makes recommendation to City Council for award of the contract.
- d. The City Council may award the contract for the proposed improvements based on the bids received.
 - e. City staff shall supervise construction and prepares payment requests for City Council consideration.
 - f. The City Council may vary the order of procedures for any §429 improvement project in accordance with the particular needs of a specific project or concerns, financial or otherwise, raised by a specific project.

F. Bonds, Assessments and/or Taxes:

1. Bonds to finance project costs may be issued at any time pursuant to Statutory authority after the improvements are ordered.
2. Process for §429 Assessments:
 - a. City staff prepares the proposed assessment roll for City Council review and the City Council by resolution orders assessment hearing.
 - b. The City Clerk shall publish the required hearing notice, mail notice of hearing date and proposed assessments to the affected property owners as provided in Minnesota Statutes §429.061.
 - c. The City Council conducts assessment hearing and adopts, revises, or rejects resolution determining the amount of the total expense the City will pay, if any, and establishing the assessment roll.
 - d. If adopted, the City Council thereby authorizes certification of the assessment to the County Auditor upon completion of the project

and receipt of all final project costs and the City Clerk shall certify the assessment roll to the County Auditor.

3. Levy for §444 Taxes: The City Council shall levy a tax on all taxable property within the district in an amount necessary to finance the cost of the improvement, including maintenance and to pay the principal and interest on bonds issued to finance the improvement. (Ordinance 2013-04, adopted January 28, 2013)

6-4-5: FINANCING OF PUBLIC IMPROVEMENTS: The cost of any improvement shall be assessed upon property by the improvements based upon benefits received with the following general principles used as a basis for adoption of a separate, more detailed assessment policy:

- A. **Project Cost:** The “project cost” of an improvement includes the costs of all necessary construction work required to accomplish the improvement, plus engineering, legal, administrative, financing and other contingent costs, including acquisition of right-of-way and other property. The finance charges include all costs of financing the project. These costs include but are not limited to financial consultant’s fees, bond rating agency fee, bond attorney’s fees, and capitalized interest. The interest charged to the project shall be included as financing charges.
- B. **City Cost:** The “city cost” of an improvement is the amount of the total improvement expense the City will pay as determined by City Council resolution. Where the project cost of an improvement is not entirely attributed to the need for service to the area served by said improvement, or where unusual conditions beyond the control of the owners of the property in the area served by the improvement would result would result in an inequitable distribution of special assessments, or for any other reason determined by the City, the City, through the use of other funds, may pay such “city cost.”
- C. **Assessable Cost:** The “assessable cost” of an improvement is equal to the “project cost” minus the “city cost”.
- D. **Interest:**
 1. The City will charge interest on special assessments at a rate specified in the resolution approving the assessment roll.
 2. If bonds were sold to finance the improvement project, the interest rate shall be one and one-half percent (1.5%) more than the average interest rate of the bonds, rounded to the nearest quarter of a percent.

3. If no bonds were sold, the interest rate shall be one and one-half percent (1.5%) more than the average interest rate as if bonds were issued, rounded to the nearest quarter of a percent.

E. Prepayment:

1. Property owners may pay their assessments in full interest free for a period of thirty (30) days the adoption of the resolution approving the assessment roll. After such period interest shall be computed from the date specified in the assessment resolution.
2. The City will transmit a certified duplicate of the assessment roll with each installment, including interest, to the County Auditor, or in lieu of such certification, annually certify to the County Auditor by November 30 in each year, the total amount of installments of and interest on assessments on each parcel which are to become due in the following year.
3. Prior to certification of principal and interest or the first installment thereof, to the County Auditor, a property owner may make a partial prepayment of the principal to the City. Such partial prepayment must be at least \$100.00. If the partial prepayment is made after the 30-day "interest free" period allowed by Statute, interest will be charged on the amount of the partial prepayment from the date specified in the resolution and paid along with the partial prepayment.
4. After the City has made the first certification of principal and interest to the County Auditor, prepayment will be accepted only for the total amount still owing including interest and must be made prior to November 15 of any year.
5. The remaining principal after the partial prepayment will be paid in equal installments over the remaining term of the special assessments.

F. Extensions.

- .1 Where an improvement is designed for service of an area beyond that receiving the initial benefit, the City may pay for increased project costs due to such provisions for future service extensions.
2. The City may levy assessments to cover this cost when a new improvement is installed as an extension of the existing improvement upon identification of such additional amount in the notice of hearing for the extensions or new improvements. As an alternative, the City may assess these costs to the area of future benefit immediately.

- G. **Project Assistance.** If the City receives financial assistance from the Federal Government, the State of Minnesota, the County, or from any other source to defray a portion of the costs of a given improvement, such aid will be used first to reduce the “city cost” of the improvement. If the financial assistance received is greater than the “city cost,” the remainder of the aid will be placed in the Capital Improvement Fund to be applied towards other City projects where allowed and at the discretion of the City Council.
- H. **Assessable Property.** Property owned by the City and other political subdivisions including municipal building sites, parks and playgrounds, but not including public streets and right-of-way, shall be regarded as being assessable on the same basis as if such property was privately owned.
- I. **Individual Benefits.** The City must construct improvements specifically designed for or shown to be of benefit solely to one or more properties. The costs for these improvements will be assessed directly to such properties, and not included in the assessments for the remainder of the project. An example of this would be utility service lines running from the main lines to the property.
- J. **Benefit Appraisals or Studies.** In the event that question exists as to whether or not the proposed assessments exceed the special benefits to the property in question, the City Council may order benefit appraisals or other studies to determine market value as it deems necessary to support the proposed assessments.
- K. **Condemnation Awards.** A property owner may elect to offset special assessments against condemnation awards subject to the property owner executing a Net Assessment Agreement approved by the City Council.

6-4-6: DEFERMENT OF SPECIAL ASSESSMENTS.

- A. Special assessments may be deferred as a result of hardship for senior citizens or retired and disabled persons pursuant to Minnesota Statutes §435.193:
 - 1. The City Council may defer the payment of any special assessment on homestead property owned by a person who is sixty five (65) years of age or older, or who is retired by virtue of permanent and total disability, and the City Clerk is hereby authorized to record the deferment of special assessments where the following conditions are met:
 - a. The applicant must apply for the deferment not later than ninety (90) days after the assessment is adopted by the City Council.
 - b. The applicant must be sixty five (65) years of age or older or retired by virtue of permanent and total disability.

- c. The applicant must be the owner of the property.
 - d. The applicant must occupy the property as their principal place of residence.
 - e. The applicant shall meet the eligibility requirements of the Minnesota Energy Assistance Program.
 - f. The average annual payment for assessments levied against the subject property must exceed one and one-half (1.5%) percent of the adjusted gross income of the applicant as evidenced by the applicant's most recent federal income tax return. The average annual payment of an assessment shall be the total cost of the assessment divided by the number of years over which it is spread.
2. Term:
- a. The deferment shall be granted for as long a period of time as the hardship exists and the conditions aforementioned have been met.
 - b. It shall be the duty of the applicant to notify the City Clerk of any change in their status that would affect eligibility for deferment.
3. Payment.
- a. The entire amount of deferred special assessments shall be due within sixty (60) days after loss of eligibility by the applicant:
 - b. If the special assessment is not paid within the sixty (60) days, the City Clerk shall add thereto interest at a per annum interest rate of one and one-half (1.5%) percent above the bond interest rate and the total amount of principal and interest shall be certified to the County Auditor for collection with taxes the following year.
 - a. Should the applicant demonstrate to the satisfaction of the City Council that full repayment of the deferred special assessment would cause the applicant particular undue financial hardship, the City Council may order that the applicant pay within sixty (60) days a sum equal to the number of installments of deferred special assessments outstanding and unpaid to date, including principal and interest, with the balance thereafter paid according to the terms and conditions of the original special assessments.

4. 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:
 - a. The death of the owner when there is no spouse who is eligible for deferment.
 - b. The sale, transfer or subdivision of all or any part of the property.
 - c. Loss of homestead status on the property.
 - d. Determination by the City Council for any reason that immediate or partial payment would impose no hardship.

- B. Deferments until development: The City Council may, at its discretion, defer special assessments related to urban development consistent with the City's Comprehensive Plan for benefited properties as follows:
 1. Properties eligible for the option deferments under this section shall meet the following criteria:
 - a. The property is zoned A-1, A-2, R-1, R-2, or R-3 District.
 - b. Development of the property is limited to one (1) dwelling unit and related accessory uses.

 2. 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, whichever occurs first:
 - a. Rezoning to R-C, R-4, R-4A, R-5, R-6, R-7, R-MH, R-B, INS or PUD District or any commercial or industrial district as defined by Chapter 50 of the Zoning Ordinance.
 - b. The subdivision of all or any part of the property.
 - c. Five (5) years from the date the assessment is initially adopted.
 - d. A date or event specified by the City Council at the time the option to defer payment of special assessments is approved.

 3. The City Council, at its discretion, may approve an extension to defer the payment of special assessments that would terminate pursuant to Section 6-4-6.B.2 of this Chapter subject to the following:

- a. The extension is requested in writing and filed with the City Clerk at least thirty (30) days prior to the expiration of the initial deferment.
- b. The request states the reasons for which the property owner believes the deferment should be extended.
- c. If approved by the City Council the extension of the deferment shall terminate as provided for by Section 6-4-6.B.2 of this Chapter. (Ordinance 2013-04, adopted January 28, 2013)

SECTION 5
RESERVED

SECTION 6

RIGHT-OF-WAY MANAGEMENT

Section:

6-6-1	Findings and Purpose
6-6-2	Definitions
6-6-3	Administration
6-6-4	Utility Coordination Committee
6-6-5	Registration and Right-of-Way Occupancy
6-6-6	Registration Information
6-6-7	Reporting Obligations
6-6-8	Permit Requirement
6-6-9	Permit Applications
6-6-10	Issuance of Permit Conditions
6-6-11	Permit Fees
6-6-12	Right-of-Way Patching and Restoration
6-6-13	Joint Applications
6-6-14	Supplementary Applications
6-6-15	Other Obligations
6-6-16	Denial of Permit
6-6-17	Installation Requirements
6-6-18	Inspection
6-6-19	Work Done Without a Permit
6-6-20	Supplementary Notification
6-6-21	Revocation of Permits
6-6-22	Mapping Data
6-6-23	Location of Facilities
6-6-24	Relocation of Facilities
6-6-25	Pre-Excavation Facility and Facilities Location
6-6-26	Damage to Other Facilities
6-6-27	Right-of-Way Vacation
6-6-28	Indemnification and Liability
6-6-29	Abandoned and Unusable Facilities
6-6-30	Appeal
6-6-31	Reservation of Regulatory and Police Powers
6-6-32	Severability

6-6-1: FINDINGS AND PURPOSE: The primary objective of this Section is to protect the public's interest in its rights-of-way. The Otsego City Council finds that regulation, maintenance and administration of public rights-of-way, as set forth in the section, is in the best interests of the health, safety and welfare of Otsego's citizens. Specifically, the Council makes the following findings:

- A. Demands for usable space over, under, and across rights-of-way threaten to exceed the already limited space practically available in existing public rights-of-way.
- B. Because systems are typically installed in shallow trenches, the streets are restored in narrow “ribbons” which deteriorate faster than the surrounding street surface and shorten the original design life, thereby increasing costs to taxpayers.
- C. Lengthy and uncoordinated construction, installation, repair or relocation of equipment or facilities within the public rights-of-way add to existing hazards and inconvenience for motorists and pedestrians.
- D. Telecommunication companies and users are not paying their fair share of the costs to acquire, develop, and maintain public rights-of-way.
- E. Efficient management and regulation of public rights-of-way can ensure economical access to City owned water, storm drain and sanitary sewer systems, as well as economical access for all other current and future users of public rights-of-way.
- F. The ordinance seeks, among other things, to accomplish the following objectives:
 - 1. Eliminate hidden subsidization of private companies by taxpayers.
 - 2. Protect the public health, safety, welfare and convenience.
 - 3. Ensure the structural integrity and quality of streets.
 - 4. Minimize detours and bottlenecks on public streets do to lengthy and uncoordinated construction activity within public rights-of-way.
 - 5. Make efficient use of the limited space below the public right-of-way to ensure both access by private utility and communications companies, as well as economical access to City owned water, storm drain, and sanitary sewer systems. (Ord. 98-2, April 13, 1998)

6-6-2: DEFINITIONS: The following definitions apply to the terms indicated below and found throughout this Section. References hereafter to “sections” are unless otherwise specified references to sections in this Section. Defined terms remain defined terms whether or not capitalized.

Applicant: Any person requesting permission to excavate or obstruct a right-of-way.

City: The City of Otsego, Minnesota. For purposes of Section 6-6-28 of this Code, City means its elected officials, officers, employees, and agents.

Construction Performance Bond: A performance bond, or other form of security posted to ensure the availability of sufficient funds to assure that right-of-way excavation and obstruction work is completed in accordance with the terms of the right-of-way permit, or other applicable State law or local regulation.

Degradation: A decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

Degradation Cost: The cost of achieve a level of restoration as determined by the City at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in proposed PUD rules parts 7819.9900 to 7819.9950.

Degradation Fee: The estimated fee established at the time of permitting by the City to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

Delay Penalty: The penalty imposed as a result of unreasonable delays in right-of-way construction.

Department: The Department of Public Works of the City.

Director: The City Administrator, or his or her designee, or such other person authorized by City Council resolution to carry out the duties assigned to the Director pursuant to this Code.

Emergency: A condition that (1) poses a clear and immediate 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: Any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Excavation Permit: The permit which, pursuant to this Section, 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: Money paid to the City by an applicant to cover the costs as provided in Section 6-6-11 of this Code.

Facility or Facilities: Any tangible asset in the right-of-way required to provide utility service.

Inspector: The City Engineer, or such other person authorized by the City Council resolution to carry out inspections related to the provisions of this Section.

Local Representative: A local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Section.

Management Costs: The actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; 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 collect the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163 or any ordinance enacted under those sections, or the City fees and costs related to appeals taken pursuant to Section 6-6-3 of this Code.

Obstruct: To place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

Obstruction Permit: The permit which, pursuant to this Section, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way by placing equipment described therein on the right-of-way for the duration specified therein.

Obstruction Permit Fee: Money paid to the City by a permittee to cover costs as provided in Section 6-6-11 of this Code.

Patch or Patching: A method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the sub-base and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two (2) feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the City's five year project plan.

Permittee: Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the City under this Section.

Person: Any natural or corporate person, business association or other business entity including, but not limited to, a partnership of any kind, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Probation: The status of a person that has been found in non-compliance with the conditions of this Section.

Probationary Period: One year from the date that a person has been notified in writing that they have been put on probation.

Registrant: Any person who (1) has or seeks to have its equipment or facilities located in any right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities in the right-of-way.

Restoration Cost: The amount of money paid to the City by a permittee to achieve the level of restoration according to plates 1 to 13 of PUD rules.

Restore or Restoration: The process by which a right-of-way is returned to the same condition and life expectancy that existed before excavation.

Right-of-Way: The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and 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 air waves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

Right-of-Way Permit: Either the excavation permit or the obstruction permit, or both, depending on the context, required by this Section.

Service or Utility Service: This includes but is not limited to (1) those services provided by a public utility as defined in Minnesota Statutes 216B.02, Subds. 4 and 6; (2) telecommunications, pipeline, community antenna television, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services; (3) the services provided by a corporation organized for the purposes set forth in Minnesota Statutes 300.03; (4) the services provided by a district heating or cooling system; and (5) cable communications systems as defined in Minnesota Statutes Chapter 238; and (6) a telecommunication right-of-way user as defined in Section 6-6-2.

Supplementary Application: An application made to excavate or obstruct more of the right-of-way than allowed by, or to extend, a permit that had already been issued.

Telecommunication Rights-of-Way User: 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 Section, a cable communication system defined and regulated under Minnesota Statutes Chapter 2381 and telecommunication activities related to providing natural gas or electric energy services whether provided by a public utility as defined in Minnesota Statutes Section 216B.02, a municipality, a municipal gas or power agency organized under Minnesota Statutes Chapters 453 and 453A, or a

cooperative electric association organized under Minnesota Statutes Chapter 308A, are not telecommunications right-of-way users for purposes of this Section.

Unusable Facilities: Facilities in the right-of-way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the facilities. (Ord. 98-2, April 13, 1998)

6-6-3: ADMINISTRATION: The Director is the principal City official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The Director may delegate any or all of the duties hereunder. (Ord. 98-2, April 13, 1998)

6-6-4: UTILITY COORDINATION COMMITTEE: The City may create an advisory utility coordination committee. Participation on the committee is voluntary. It will be composed of any registrants that wish to assist the City in obtaining information and by making recommendations regarding use of the right-of-way, and to improve the process of performing construction work therein. The Director may determine the size of such committee and shall appoint members from a list of registrants that have expressed a desire to assist the City. (Ord. 98-2, April 13, 1998)

6-6-5: REGISTRATION AND RIGHT-OF-WAY OCCUPANCY:

- A. **Registration.** Each person who occupies, uses, or seeks to occupy or use, the right-of-way for purposes of placing, maintaining or repairing any equipment or facilities in the right-of-way, including persons with installation and maintenance responsibilities by lease, sub-lease or assignment, must register with the Director. Registration will consist of providing application information and paying a registration fee.
- B. **Registration Prior to Work.** No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the Director.
- C. **Exceptions.** Nothing herein shall be construed to repeal or amend the provisions of a City ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this Section. However, nothing herein relieves a person from compliance with the provisions of the Minnesota Statutes Chapter 216D, "One Call Law." (Ord. 98-2, April 13, 1998)

6-6-6: REGISTRATION INFORMATION:

A. **Information Required.** The information provided to the Director at the time of registration shall include, but not be limited to:

1. Each of the following, if applicable, registrants name, Gopher One Call registration certification number, address, e-mail address, telephone and facsimile numbers.
2. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
3. A certificate of insurance or self-insurance:
 - a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota, or a form of self-insurance acceptable to the Director.
 - b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities in the right-of-way by the registrant, its officers, agents, employees, and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property.
 - c. Naming the City as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage.
 - d. Requiring that the Director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term.
 - e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the Director in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Section.
4. The City may require a copy of the actual insurance policies.

5. If the person is a corporation, a copy of the certificate required to be filed under Minnesota Statutes 300.06 as recorded and certified to by the Secretary of State.
6. A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other applicable State or Federal agency, where the person is lawfully required to have such certificate from said Commission or other State or Federal agency.

B. **Notice of Changes.** The registrant shall keep all of the information listed above current at all times by providing to the Director information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change. (Ord. 98-2, April 13, 1998)

6-6-7: REPORTING OBLIGATIONS:

A. **Operations.** Each registrant shall, at the time of registration and by December 1st of each year, file a construction and major maintenance plan for underground facilities with the Director. Such plan shall be submitted using a format designated by the Director and shall contain the information determined by the Director to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The plan shall include, but not be limited to, the following information:

1. The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next year project").
2. To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five (5) years following the next calendar year (in this section, a "five year project").

The term "project" in this section shall include both next year projects and five year projects. By January 1st of each year, the Director will have available for inspection in the Director's office a composite list of all projects of which the Director has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list. Thereafter, by February 1st, each registrant may change any project in its list of next year projects, and must notify the Director and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next year project of another registrant listed by another registrant.

B. **Additional Next Year Projects.** Notwithstanding the foregoing, the Director will not deny an application for a right-of-way permit for failure to include a project in

a plan submitted to the City if the registrant has used commercially reasonable efforts to anticipate and plan for the project. (Ord. 98-2, April 13, 1998)

6-6-8: PERMIT REQUIREMENT:

- A. **Permit Required.** Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the Director to do so.
 - 1. **Excavation Permit.** An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.
 - 2. **Obstruction Permit.** An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
- B. **Permit Extensions.** No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (1) makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (2) a new permit or permit extension is granted.
- C. **Delay Penalty.** Notwithstanding Section 6-6-8.B, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by City Council resolution.
- D. **Permit Display.** Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the Director. (Ord. 98-2, April 13, 1998)

6-6-9: PERMIT APPLICATIONS: Application for a permit is made to the Director. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- A. Registration with the Director pursuant to this Section.
- B. Submission of a completed permit application form, including all required attachments, and sealed drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.

- C. Payment of money due the City for:
 - 1. Permit fees, estimated restoration costs, and other management costs.
 - 2. Prior obstructions or excavations.
 - 3. Any undisputed loss, damage, or expense suffered by the City because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the City.
 - 4. Franchise or user fees, if applicable.
- D. Payment of disputed amounts due the City by posting security or depositing in an escrow accounts an amount equal to at least one hundred ten (110) percent of the amount owing.
- E. When an excavation permit is requested for purposes of installing additional facilities, and the posting of a construction performance bond for the additional facilities is insufficient, the posting of an additional or larger construction performance bond for the additional facilities may be required. (Ord. 98-2, April 13, 1998)

6-6-10: ISSUANCE OF PERMIT; CONDITIONS:

- A. **Permit Issuance.** If the applicant has satisfied with requirements of this Section, the Director shall issue a permit.
- B. **Conditions.** The Director may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use. (Ord. 98-2, April 13, 1998)

6-6-11: PERMIT FEES:

- A. **Excavation Permit Fee.** The excavation permit fee shall be established in Section 2-4-2 of the City Code for joint installations as provided for by Section 6-6-13 of the City Code and individual excavations in an amount sufficient to recover the following costs:
 - 1. The City management costs.
 - 2. Degradation costs, if applicable.

3. Use of the limited area within public right-of-way.
(Ordinance 2015-04, adopted June 22, 2015)

- B. **Obstruction Permit Fee.** The obstruction permit fee shall be established by the Director and shall be in an amount sufficient to recover the City management costs.
- C. **Payment of Permit Fees.** No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The City may allow the applicant to pay such fees within thirty (30) days of billing.
- D. **Non-Refundable.** Permit fees that were paid for a permit that the Director has revoked for a breach as stated in Section 6-6-21 are not refundable. (Ord. 98-2, April 13, 1998)

6-6-12: RIGHT-OF-WAY PATCHING AND RESTORATION:

- A. **Timing.** The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of extraordinary circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under Section 6-6-15.
- B. **Patch and Restoration.** Permittee shall patch its own work. The City may choose to either have the permittee restore the right-of-way or to restore the right-of-way itself.
 - 1. **City Restoration.** If the City restores the right-of-way, permittee shall pay the costs thereof within thirty (30) days of billing. If, during the thirty-six (36) months following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the City, within thirty (30) days of billing, all costs associated with having to correct the defective work.
 - 2. **Permittee Restoration.** If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in an amount determined by the City Engineer to be sufficient to cover the cost of restoration. If, within thirty-six (36) months after completion of the restoration of the right-of-way, the City Engineer determines that the right-of-way has been properly restored, the surety on the construction performance bond shall be released.
- C. **Standards.** The permittee shall perform patching and restoration according to the standards and with the materials specified or approved by the City Engineer.

The City Engineer shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The City Engineer, in exercising this authority, shall comply with PUC standards for right-of-way restoration and shall further be guided by the following considerations:

1. The number, size, depth and duration of the excavations, disruptions, or damage to the right-of-way.
 2. The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;
 3. The pre-excavation condition of the right-of-way; the remaining life expectancy of the right-of-way affected by the excavation.
 4. Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way.
 5. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.
- D. **Guarantees.** By choosing to restore the right-of-way itself, the permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During the thirty-six (36) month period it shall, upon notification from the Director, correct all restoration work to the extent necessary, using the method required by the City Engineer. Said work shall be completed within five (5) business days of the receipt of the notice from the Director, exclusive of weekends, legal holidays, periods during which work cannot be done because of circumstances beyond permittees reasonable control or days when work is prohibited as unseasonal or unreasonable under Section 6-6-15.
- E. **Failure to Restore.** If the permittee fails to restore the right-of-way in the manner and to the condition required by the City Engineer, or fails to satisfactorily and timely complete all restoration required by the City Engineer, the City at its option may do such work. In the event the permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its rights under the construction performance bond.
- F. **Degradation Cost in Lieu of Restoration.** In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities. (Ord. 98-2, April 13, 1998)

6-6-13: JOINT APPLICATIONS:

- A. **Joint Application.** Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- B. **With City Projects.** Registrants who join in a scheduled obstruction or excavation performed by the City, whether or not it is a joint application by two (2) or more registrants or a single application, are not required to pay the obstruction and degradation portions of the permit fee.
- C. **Shared Fees.** Registrants who apply for permits for the same obstruction or excavation, which the City does not perform, may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications. (Ord. 98-2, April 13, 1998)

6-6-14: SUPPLEMENTARY APPLICATIONS:

- A. **Limitation on Area.** A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area: (1) make application for a permit extension and pay any additional fees required thereby, and (2) be granted a new permit or permit extension.
- B. **Limitation on Dates.** A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date. (Ord. 98-2, April 13, 1998)

6-6-15: OTHER OBLIGATIONS:

- A. **Compliance with Other Laws.** Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, license, 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 Minnesota Statutes 216D.01-09 (“One Call Excavation Notice System”). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

- B. **Prohibited Work.** Except in an emergency, and with the approval of the Director, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- C. **Interference with Right-of-Way.** 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. (Ord. 98-2, April 13, 1998)

6-6-16: DENIAL OF PERMIT: The Director may deny a permit for failure to meet the requirements and conditions of this Section or if the Director 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. (Ord. 98-2, April 13, 1998)

6-6-17: INSTALLATION REQUIREMENTS: The excavation, backfilling, patching, and restoration, and all other work performed in the right-of-way shall be done in conformance with Engineering Standards adopted by the PUC or other applicable local requirements, in so far as they are not inconsistent with the PUC Rules. (Ord. 98-2, April 13, 1998)

6-6-18: INSPECTION:

- A. **Notice of Completion.** When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with PUC Rules.
- B. **Site Inspection.** Permittee shall make the work site available to the City Engineer and to any other City employees or agents and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- C. **Authority of Director.**

1. At the time of inspection, the Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well being of the public.
2. The Director may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the permittee shall present proof to the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 6-6-21. (Ord. 98-2, April 13, 1998)

6-6-19: WORK DONE WITHOUT A PERMIT:

A. Emergency Situations.

1. Each registrant shall immediately notify the Director of any event regarding its facilities which is considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Section for the actions is took in response to the emergency.
2. If the Director becomes aware of an emergency regarding a registrant's facilities, the Director will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the Director may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

- B. Non-Emergency Situations.** Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit, pay double all the other fees required by this Section, deposit with the Director the fees necessary to correct any damage to the right-of-way and comply with all other requirements of this Section. (Ord. 98-2, April 13, 1998)

6-6-20: SUPPLEMENTARY NOTIFICATION: If the obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, permittee

shall notify the Director of the accurate information as soon as this information is known.
(Ord. 98-2, April 13, 1998)

6-6-21: REVOCATION OF PERMITS:

- A. **Substantial Breach.** The City reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
1. The violation of any material provision of the right-of-way permit.
 2. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetuate any fraud or deceit upon the City or its citizens.
 3. Any material misrepresentation of fact in the application for a right-of-way permit.
 4. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control.
 5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 6-6-18.
- B. **Written Notice of Breach.** If the Director 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 Director shall make a written demand upon the permittee to remedy such violation. The demand shall state the continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the Director, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
- C. **Response to Notice of Breach.** Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the Director with a plan, acceptable to the Director, that will cure the breach. Permittee's failure to so contact the Director, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the Director, or the permittee's failure to submit an acceptable plan, or permittee's

failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

- D. **Cause for Probation.** From time to time, the Director may establish a list of conditions of the permit, which if breached, will automatically place the permittee on probation for one (1) full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.
- E. **Automatic Revocation.** If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one (1) full year, except for emergency repairs.
- F. **Reimbursement of City Costs.** If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the cost of collection and reasonable attorneys' fees incurred in connection with such revocation. (Ord. 98-2, April 13, 1998)

6-6-22: MAPPING DATA:

- A. **Information Required.** Each registrant shall provide mapping information required by the City in accordance with PUC Rules.
- B. **Trade Secret Information.** At the request of any registrant, any information requested by the City, which qualifies as a "trade secret" under Minnesota Statutes 13.37(b) shall be treated as trade secrete information as detailed therein. (Ord. 98-2, April 13, 1998)

6-6-23: LOCATION OF FACILITIES:

- A. **Under-grounding.** Unless otherwise permitted by an existing franchise or Minnesota Statutes 216B.34, or unless existing above-ground facilities is repaired or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.
- B. **Corridors.**
 - 1. The City Engineer may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the City Engineer expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the Director involving the

installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

2. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City Engineer 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, under this requirement is waived by the Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.
- C. **Nuisance.** One (1) year after the passage of this Section, any facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a usable condition.
 - D. **Limitation of Space.** To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the Director shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the Director shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest. (Ord. 98-2, April 13, 1998)

6-6-24: RELOCATION OF FACILITIES:

- A. A registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the Director for good cause requests such removal and relocation, and shall restore the right-of-way to the same conditions if it was in prior to said removal or relocation. The Director may make such request to prevent interference by the company's equipment or facilities with (1) a present or future City use of the right-of-way, (2) a public improvement undertaken by the City, (3) an economic development project in which the City has an interest or investment, (4) when the public health, safety and welfare require it, or (5) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.
- B. Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a

non-governmental entity unless and until the reasonable costs thereof are first paid to the person thereof. (Ord. 98-2, April 13, 1998)

6-6-25: PRE-EXCAVATION FACILITY AND FACILITIES LOCATION: In addition to complying with the requirements of Minnesota Statutes 216D.01-09 (“One Call Excavation Notice System”) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and approximate vertical placement of all said facilities. Any registrant whose facilities is 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. (Ord. 98-2, April 13, 1998)

6-6-26: DAMAGE TO OTHER FACILITIES:

- A. When the City does work in the right-of-way and finds it necessary to maintain, support, or move a registrant’s facilities to protect it, the Director shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) days from the date of billing.
- B. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the City’s response to an emergency occasioned by that registrant’s facilities. (Ord. 98-2, April 13, 1998)

6-6-27: RIGHT-OF-WAY VACATION:

- A. **Reservation of Right.** If the City vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant’s or permittee’s facilities, the City shall reserve, to and for itself and all registrants having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.
- B. **Relocation of Facilities.** If the vacation requires the relocation of registrant’s facilities; and (1) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or (2) if the vacation proceedings are initiated by the City, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the City and the registrant or permittee; or (3) if the vacation proceedings are initiated by a person or

persons other than the registrant or permittee, such other person or persons must pay the relocation costs. (Ord. 98-2, April 13, 1998)

6-6-28: INDEMNIFICATION AND LIABILITY: By registering with the Director, or by accepting a permit under this Ordinance, a registrant or permittee agrees as follows:

A. **Limitation of Liability.** By reason of the acceptance of a registration or the grant of a right-of-way permit, the City does not assume any liability (1) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the City, or (2) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of facilities by registrants or activities of registrants.

B. **Indemnification.**

1. A registrant or permittee shall indemnify, keep, and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the issuance of permits or by the construction, maintenance, repair, inspection, or operation of registrant's or permittee's facilities located in the right-of-way.

2. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the local government unit's negligence as to the issuance of permits or inspections to ensure permit compliance. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts that the registrant or permittee reasonably believes will cause injury or damage, and the performance is nevertheless ordered or directed by the City after receiving notice of the registrant's or permittee's determination.

C. **Defense.**

1. If a suit is brought against the City under circumstances where the registrant or permittee is required to indemnify, the registrant or permittee, at its sole cost and expense, shall defend the City in the suit if written notice of the suit is promptly given to the registrant or permittee within a period in which the registrant or permittee is not prejudiced by the lack or delay of notice.

2. If the registrant or permittee is required to indemnify and defend, it shall thereafter have control of the litigation, but the registrant or permittee may not settle the litigation without the consent of the City. Consent will not be unreasonably withheld.

3. This part is not, as to third parties, a waiver of any defense, immunity, or damage limitation otherwise available to the City.
4. In depending an action on behalf of the City, the registrant or permittee is entitled to assert in an action every defense, immunity, or damage limitation that the City could assert in its own behalf. (Ord. 98-2, April 13, 1998)

6-6-29: ABANDONED AND UNUSABLE FACILITIES:

- A. **Discontinued Operations.** A registrant who has determined to discontinue its operations in the City must either:
1. Provide information satisfactory to the Director that the registrant's obligations for its facilities in the right-of-way under this Section have been lawfully assumed by another registrant.
 2. Submit to the Director a proposal and instruments for transferring ownership of its facilities to the City. If a registrant proceeds under this clause, the City may, at its option:
 - a. Purchase the facilities; or
 - b. Require the registrant, at its own expense, to remove it; or
 - c. Require the registrant to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.
- B. **Abandoned Facilities.** Facilities of a registrant who fails to comply with Section 6-6-29.A and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to (1) abating the nuisance, (2) taking possession of the facilities and restoring it to a usable condition, or (3) requiring removal of the facilities by the registrant, or the registrant's successor in interest.
- C. **Removal.** Any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way during the next scheduled excavation, unless this requirement is waived by the Director. (Ord. 98-2, April 13, 1998)

6-6-30: APPEAL:

- A. A right-of-way user that (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a written request in a timely manner. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

- B. Upon affirmation by the City Council of the denial, revocation, or fee imposition, the right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City Council and right-of-way user. If the parties cannot agree on an arbitrator, the matter must be resolved by a three (3) person arbitration panel made up of one (1) arbitrator selected by the City, one (1) arbitrator selected by the right-of-way user, and one (1) selected by the other two (2) arbitrators. The costs and fees of single arbitration shall be borne equally by the City and right-of-way user. In the event there is a third (3rd) arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third (3rd) arbitrator and of the arbitration. (Ord. 98-2, April 13, 1998)

6-6-31: RESERVATION OF REGULATORY AND POLICE POWERS: A permittee's or registrant's rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public. (Ord. 98-2, April 13, 1998)

6-6-32: SEVERABILITY: If any section, subsection, sentence, clause, phrase, or portion of this Section is for any reason held invalid or unconstitutional by any court or administrative agency 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. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this Section or any portions of this Section is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist hereunder shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. Nothing in this Section precludes the City from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein. (Ord. 98-2, April 13, 1998)

SECTION 7

PARK AND TRAIL REGULATIONS

Section:

6-7-1	Application
6-7-2	Exceptions
6-7-3	Curfew
6-7-4	Prohibited Activities
6-7-5	Animals
6-7-6	Picnics and Picnic Shelters
6-7-7	Sale of Liquor
6-7-8	Outdoor Ice Rinks
6-7-9	Archery Range

6-7-1: APPLICATION: This section applies to all City of Otsego parks and trails within the City. (Ord. 2005-06, May 5, 2005)

6-7-2: EXCEPTIONS: An activity otherwise prohibited by this section may be allowed to occur under any one or more of the following circumstances and upon such terms and conditions as the City Council may prescribe:

- A. When the activity is conducted by a duly authorized public employee performing a necessary public function.
- B. When the activity is a specifically authorized exception granted in writing by the City Council. (Ord. 2005-06, May 5, 2005)

6-7-3: CURFEW:

- A. No person shall be upon any City of Otsego parks or trails, nor shall any person park a vehicle upon any City park, greenway or parking lot within a City park or greenway between the hours of 11:00 PM and 5:00 AM of the following day, subject to more restrictive provisions of this Section and minors further subject to the restrictions of the juvenile curfew established by Chapter 5, Section 3 of the City Code. (Ordinance 2015-01, adopted January 12, 2015)
- B. Use of City of Otsego trails directly adjacent to and within the right-of-way of public streets shall be exempt from the curfew requirement set forth in Section 6-7-3.A of this Chapter. (Ord. 2005-06, May 5, 2005)

6-7-4: PROHIBITED ACTIVITIES: The following activities shall be prohibited upon or within all City of Otsego parks, greenways and trails within the City:

A. Injuring Structures.

1. No person shall cut, break, scratch, mark or in any way damage or deface any building, fence, sign, lamp, flag pole, table, bench, railing, paving, public utility, improvement, facility or other structure, feature or property upon or within any City of Otsego park or trail.
2. No person shall move any bench, table or other equipment, structure or improvement located within any City of Otsego park or trail, except that portable picnic tables may be moved within the designated limits of the picnic area in which they are located.
3. No person shall install upon any City of Otsego park or trail permanent grills, tables, chairs, benches, volleyball, badminton, tennis, or croquet standards, or horseshoe stakes.

B. Vegetation. Without specific permission of the City Council, no person shall in any way plant or cut, injure or deface any tree, shrub, or plant upon or within any City of Otsego park or trail.

C. Refuse. No person shall deposit, place or leave in any City of Otsego park or trail any paper, rubbish, waste, cans, bottles or refuse of any kind, whether such material is offensive to the senses or injurious to health, except in provided receptacles. Garbage, trash and refuse from activities occurring outside of any City of Otsego park or trail shall not be deposited within any park or trail or any receptacles within any park or trail.

D. Signs. No person shall post, glue, tack or otherwise display any sign, placard, banner, advertisement or inscription upon any City of Otsego park or trail.

E. Use of Bathroom Facilities.

1. No person shall fail to cooperate in maintaining bathroom facilities within any City of Otsego park or trail in a neat, orderly and sanitary condition.
2. No person over the age of six (6) years shall use bathroom facilities designated for members of the opposite sex.

F. Commercial Activities. No person shall sell, rent, lease, or offer for sale, rent or lease any article, thing, service whatsoever upon any City of Otsego park or trail without prior approval of a permit by the City Council.

- G. **Disorderly Conduct.** No person shall use threatening, profane, abusive disorderly, insulting or indecent language or commit any act that is a breach of the public peace upon any City of Otsego park or trail.
- H. **Gambling.** No person shall gamble upon any City of Otsego park or trail.
- I. **Fire.** No person shall start, maintain or allow to burn any fire upon any City of Otsego park or trail except as allowed by Section 6-7-7 of this Chapter.
- J. **Nudity.** No person shall be upon any City of Otsego park or trail nude, clad solely in any undergarment or otherwise clothed in such a manner as to expose their buttocks or male or female genitalia.
- K. **Traps.** No person shall possess, place or set or cause to be placed or set any trap, trapping device or weapon or shall take or kill any animal within any City of Otsego park or trail.
- L. **Weapons.** No person shall discharge any firearm or conduct archery activities within any City of Otsego park or trail.
- M. **Golfing.** No person shall engage in golfing practice within any City of Otsego park or trail.
- N. **Motorized Vehicles.** No person shall park, drive or move, or cause to be parked, driven or moved, any form of motorized vehicle over, on or across any portion of a City of Otsego park or trail other than on a driveway providing access to or through the park or trail or within a facility designated for parking.
- O. **Watercraft.** Except at designated public accesses, no floating device, boat or other form of watercraft or structure shall be placed on, or rolled, dragged or pushed over, or moored to any structure within any City of Otsego park or trail.
- P. **Fireworks.** No person shall fire, discharge or explode any squib, cracker, firecracker or any other thing containing powder or other explosive material upon any City of Otsego park or trail.
- Q. **Swimming.** No person shall swim, bathe in or enter any waters upon any City of Otsego park or trail, except in areas designated for such activities by the City Council and posted by signs. (Ord. 2005-06, May 5, 2005)
- R. **Smoking and Tobacco.** Smoking of any tobacco product or e-cigarette and the use of oral tobacco products or "spit" tobacco is prohibited within any City of Otsego park. (Ordinance 2013-15, adopted November 25, 2013)

6-7-5: ANIMALS:

- A. No person shall take or allow to be taken upon any City of Otsego park or trail any animal except as provided for by this Section.
- B. The domestic animal shall be under physical restraint on a leash or using an electronic remote collar and accompanied by and under the control and direction of a responsible person and not permitted to run at large at any time within any City of Otsego park or trail unless within an area specifically designated by the City Council for off-leash activities.
- C. Any female domestic animal in heat or season shall be prohibited from any City of Otsego park or trail.
- D. Any person having custody of the domestic animal shall have in their immediate physical possession a means to collect and sanitarly dispose of and shall immediately collect and remove any and all feces deposited by the domestic animal within any City of Otsego park or trail.
- E. Horses shall only be allowed upon City of Otsego parks and trails specifically designated for such use by the City Council. Any person having custody of the domestic animal shall have in their immediate physical possession a means to collect and sanitarly dispose of any and all animal fecal matter and shall immediately collect and remove any and all feces deposited by the horse within any City of Otsego park or trail. (Ordinance 2012-14, adopted October 22, 2012)
- F. Fenced areas within parks designated as Dog Parks for off-leash recreation shall be subject to the rules of this section and the following additional provisions:
 - 1. Persons and dogs entering the dog park do so at their own risk; the City shall not be liable for any claim, demand, injury, damage, action, or causes of action whatsoever to such persons, dogs, or property due to the negligence or failure to act of the City.
 - 2. Dangerous or potentially dangerous dogs, as defined by Wright County Ordinance, shall be prohibited from entering the dog park.
 - 3. Dogs must be at least four (4) months of age. (Ordinance 2015-10, adopted November 9, 2015)

6-7-6: PICNICS AND PICNIC SHELTERS:

- A. No person shall use any portion of the picnic areas for the purpose of holding picnics to the unreasonable exclusion of others, nor shall any person use such areas and facilities for an unreasonable length of time if such facilities are

crowded, except as may be allowed by the City of Otsego Park Shelter Reservation policies.

- B. A fire used for culinary purposes may be started and maintained upon any City of Otsego park or trail only in a grill or inside a fire ring designed for such purposes within a designated picnic area. No person shall leave a picnic area before any fire has been completely extinguished and before all garbage, trash and refuse has been placed in the receptacles provided. Where no receptacles are provided, all garbage, trash and refuse shall be carried away from the park and shall be properly disposed of elsewhere.
- C. No person shall leave a picnic area before all garbage, trash and refuse has been placed in the receptacles provided. Where no receptacles are provided, all garbage, trash and refuse shall be carried away from the park and shall be properly disposed of elsewhere. (Ord. 2005-06, May 5, 2005)

6-7-7: SALE OF LIQUOR: No person or organization shall sell any intoxicating liquor or 3.2 malt liquor beverages within any City of Otsego park or trail. (Ord. 2005-11, May 5, 2005)

6-7-8: OUTDOOR ICE RINKS:

- A. Use of ice rinks shall be limited to between the hours of 5:00AM and 10:00PM each day.
- B. Use of hockey sticks and hockey pucks shall only be allowed within the designated hockey rink.
- C. Ice rinks are provided for informal recreational use only; no organized practices or games affiliated with a league or athletic association are to take occur on the ice rinks.
- D. No animals shall be allowed on any ice surface that is maintained for skating. (Ordinance 2015-01, adopted January 12, 2015)

6-7-9: ARCHERY RANGE:

- A. Persons entering the archery range do so at their own risk; the City shall not be liable for any claim, demand, injury, damage, action, or causes of action whatsoever to such persons or property due to the negligence or failure to act of the City.
- B. Rules:
 - 1. All users shall adhere to the posted archery shooting procedures.

2. Users shall only shoot at designated targets, including shooting broadhead arrows only at specifically designated targets, and be aware of the target and what is beyond the target.
3. Always draw bow with arrow parallel to the ground unless using a crossbow, only nock arrows at the shooting line unless using a crossbow, and shall at all times keep bow pointed towards the target when loaded.
4. Persons under the age of sixteen (16) years must be accompanied and supervised by an adult. (Ordinance 2015-10, adopted November 9, 2015)

SECTION 8
STREET LIGHTING

Section:

6-8-1	Purpose
6-8-2	Definitions
6-8-3	General Provisions
6-8-4	Standard Street Lighting
6-8-5	Above Standard Street Lighting
6-8-6	Installation
6-8-7	Operation and Maintenance Costs

6-8-1: PURPOSE: The purpose of this section is to establish policies and regulations for the uniform installation and efficient operation and maintenance of street lights along public streets and trails to ensure adequate visibility for vehicles and pedestrians and to protect public safety. (Ord. 2008-22, November 24, 2008)

6-8-2: DEFINITIONS: The following terms shall be defined as follows for the purposes of this Section:

Above Standard System: Street lighting that exceed basic illumination needs established by this Section for aesthetic or unique vehicle and/or pedestrian traffic situations including but not limited to:

- A. Any system with fixtures spaced more closely than necessary to meet the standards for traffic or pedestrian safety.
- B. Use of non-standard lighting units.

Lighting Unit, Type I: A single arm Shepard's hook aluminum pole with the luminarie mounted at the down turned end of the pole and also having a decorative base cover and one banner bracket.

Lighting Unit, Type II: A straight round tapered steel or aluminum pole and cobra or mongoose or shoebox style luminaire mounted either at the top of the pole or at the end of a mast arm.

Lighting Unit, Type III: A straight round aluminum pole and top mounted lantern or globe luminaire.

HPS: High Pressure Sodium.

LED: Light Emitting Diode.

Property owner: The person or entity identified by Wright County property tax records as the owner of a parcel of land.

Standard System: Street lighting that fulfills basic illumination standards as established by this Section. (Ord. 2008-22, November 24, 2008)

6-8-3: GENERAL PROVISIONS:

- A. The City Engineer shall plan the Street Lighting System.
- B. All street lighting fixtures and materials shall be listed and approved by Underwriters Laboratories, Inc. (UL).
- C. All Luminaries shall be controlled by a photo cell to be oriented north to the extent practical.
- D. All fixtures shall comply with the Otsego Standard Lighting specifications and sheets included in the Engineering Manual and the following minimum specifications:

	Type I	Type II	Type III
Luminaries	HPS	HPS	HPS
Wattage	70	150	N/A
Horizontal Cutoff	90 degree	90 degree	90 degree
Pole Type	Aluminum	Steel or Aluminum	Steel or Aluminum
Luminaries Height	15 feet	30 feet	N/A

- E. Finish shall be factory applied polyester powder paint with paint chip supplied to the City Engineer for approval prior to installation.
- F. Installation of non-standard fixtures or above standard systems shall be allowed upon approval by the City Council provided that:
 - 1. The non-standard fixtures or above standard system shall be consistent with the minimum efficiency, durability and maintenance specifications of this Section as determined by the City Engineer.
 - 2. Those requesting installation of the non-standard fixtures or above standard systems shall be subject to an agreement assigning responsibility for installation, maintenance, operating and administrative costs incurred that are in excess of standard fixtures or standard systems.

- G. All lighting units installed as part of the Street Lighting System shall be supplied with a manufactures warranty meeting the following specifications:
1. The luminaire electrical system consisting of a core and coil ballast, starting aid, capacitor and wiring inside the lighting unit will be free from defects for a period of five (5) years from the date installation is complete and accepted by the City of Otsego:
 2. The luminaire housing shall be free from defects for a period of two (2) years from the date installation is complete and accepted by the City of Otsego.
- H. The location of the street light system within the public right-of-way shall comply with the specifications of the Engineering Manual and Chapter 6, Section 6 of the City Code. (Ord. 2008-22, November 24, 2008)

6-8-4: STANDARD STREET LIGHTING: The standard street lighting system shall consist of the following:

- A. Type II lighting units shall be installed:
1. At all corners of a four way intersection of two arterial streets or at each corner of the approaching vehicle lane of an arterial street at a "T" intersection with another arterial street.
 2. At the corner of the approaching vehicle lane for all intersections with arterial streets.
 3. At two (2) opposing corners of a four way intersection of two collector streets; or at the corner of the approaching vehicle lane of a collector street intersecting another collector street at a "T" intersection.
- B. Type III lighting units shall be installed:
1. Every six hundred sixty (660) feet along both sides of urban collector street streets off-set such that there is one street light approximately every three hundred thirty (330) feet on alternating sides of the collector street.
 2. At two (2) opposing corners of a four way intersection of two local streets or a local street with a collector street; or at the corner of the approaching vehicle lane of a local street at a "T" intersection with another local or collector street.
 3. At the terminus end of a cul-de-sac street.

4. At the point of deflection in the alignment of a single curved street where the interior angle is one hundred thirty five degrees or less. The lighting unit is to be located on the interior of the curve unless a sidewalk exists on the outside of the curve and then the lighting unit shall be located adjacent to the sidewalk.

C. Residential Street Lighting:

1. Within residential subdivisions developed within the Sanitary Sewer Service District defined by the Comprehensive Plan, one (1) Type III lighting unit shall be installed:
 - a. On one (1) side of a public street at the mid-point of a block longer than nine hundred (900) feet. If a sidewalk is located on one side of a street, the light unit shall be installed on the same side of the street.
 - b. At mid-block access points to off-street trail corridors.

D. Industrial Street Lighting.

1. Within industrial subdivisions, one (1) Type II fixture shall be installed every six hundred sixty (660) feet along one side of local industrial streets.

- E. Other. Street lights shall be installed as Standard Street Lighting as determined by the City Engineer and/or Public Works Director to address unique vehicle traffic, pedestrian or public safety issues. (Ord. 2008-22, November 24, 2008)

6-8-5: ABOVE STANDARD STREET LIGHTING: The following street lighting shall be above standard systems and shall be installed in addition to the lighting required by Section 6-8-4 of this Section:

A. Commercial Street Lighting.

1. Within subdivisions developed within the Sanitary Sewer Service District defined by the Comprehensive Plan, the following street lighting shall be installed:
 - a. Alternating Type I and Type II lighting units shall be installed along both sides of local commercial streets spaced one hundred fifty (150) feet between fixtures. The alignment of lighting units on opposite sides of the same street shall be off-set such that the Type I and Type II lighting units are approximately across from each other along the length of the street.

- B. Other. Street lights shall be installed as Above Standard Street Lighting as determined by the City Engineer and/or Public Works Director to address unique vehicle traffic, pedestrian or public safety issues. (Ord. 2008-22, November 24, 2008)

6-8-6: INSTALLATION:

- A. New Subdivisions. Street lighting shall be installed by the developer at their cost in all new subdivisions in accordance with this Section and the Subdivision Ordinance.
- B. Existing Developed Areas: Street lighting shall be installed in developed areas of the City in accordance with the following provisions:
 - 1. The City shall establish a program for installation of street lighting along arterial and collector streets defined by the Transportation Plan in accordance with this Section as part of the Capital Improvement Plan.
 - 2. Within existing developed areas and along local streets, street lighting shall be installed:
 - a. At the direction of the City Council.
 - b. Any property owner may request installation of a street light upon a local street benefiting their property by submitting a petition to the City Clerk subject to the following procedures:
 - 1) The petition shall include the following information:
 - a) The name, address and phone number of a Petitioner's Representative.
 - b) A map or other description indicating the street(s) upon which the light(s) are to be located and number of lights being requested.
 - c) Signatures of a minimum of sixty (60) percent of the property owners within six hundred sixty (660) feet of a proposed street light location approving of the proposed installation.
 - d) Provide a written statement as to the demonstrated need for the requested street light(s).

- 2) Upon submission of a complete petition, the City Clerk shall schedule consideration of the petition for a City Council meeting occurring not more than thirty (30) days from the date which it is received.
 - 3) The City Engineer and/or Public Works Director shall prepare a report to the City Council regarding conformance with the provisions of this Section and recommendations as to the need for installation of street lighting requested by the petition.
3. The cost for equipment and installation of street lighting within existing developed areas shall be assigned at the direction of the City Council. (Ord. 2008-22, November 24, 2008)

6-8-7: OPERATION AND MAINTENANCE COSTS: Charges for electricity and maintenance of street lighting shall be made against all property benefited by the streetlights in accordance with the following provisions:

- A. Standard Street Lighting. The costs of operating and maintaining the standard street lighting system shall be financed as part of the General Fund.
- B. Above Standard Street Lighting. The costs for operating above standard street lighting systems shall be funded through establishment of a special service district pursuant to Minnesota Statutes 428A.02 encompassing all benefited property:
 1. In accordance with Minnesota Statutes 428A.02, Subd. 1, the City of Otsego hereby establishes a special service district to fund the on-going operation and maintenance of the Above Standard Street Lighting System described in Section 6-8-5 of this Chapter.
 2. Special Service District Boundaries:
 - a. The special service district shall include commercial properties classified as such under Minnesota Statutes 273.13 and zoned Business District or PUD District allowing commercial uses as defined by Section 20-50-1.C of the City Code.
 - b. Hearing.
 - 1) The City Clerk shall set a public hearing public hearing for the City Council to consider adoption of a map establishing the defined Above Standard Street Lighting System Special Service District for the next calendar year no later than November 30 of each year or the prior special service district

boundaries approved by the City Council and published shall remain in full force and effect.

- 2) Notice of a public hearing to consider adoption of amendments to the Above Standard Street Lighting System Service District boundaries shall be given by publication in at least two issues of the official City newspaper with a minimum of fourteen days (14) between said publications.
 - 3) Notice of a public hearing to consider adoption of amendments to the Above Standard Street Lighting System Service District Boundaries shall be mailed to the property owner of each parcel to be included in the special service district not less than ten (10) days before the date of the hearing.
 - 4) The public hearing shall be conducted not less than three (3) days after the date of the second publication of the notice in the official City newspaper.
 - 5) A copy of the notice and a list of the property owners and addresses to which the notice was sent shall be attested and made a part of the records of the proceeding.
 - 6) Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Section provided a bona fide attempt has been made to comply with the notice requirements of this Section and Minnesota Statutes.
3. Above Standard Street Lighting service rates shall be charged in accordance with charges incurred to the City and estimated costs for future maintenance and replacement of lighting units associated with the Above Standard Street Lighting System and established annually by ordinance in Section 2-4-2.K of the City Code.
 4. The charges for Above Standard Street Lighting shall assessed to all properties within the Special Service District established by this Section in accordance with Minnesota Statues 428A.05.
- C. New Subdivisions. In new subdivisions in which standard and/or above standard street lighting systems are installed, the developer shall make payment to the City in the amount set forth by Section 2-4-2.K.6 of the City Code for each lighting unit for the estimated cost of operation and maintenance of the street lighting system within the subdivision for a period of two (2) years. (Ord. 2008-22, November 24, 2008)

SECTION 9

STORMWATER UTILITIES

Section:

6-9-1	Purpose
6-9-2	Definitions
6-9-3	Applicability
6-9-4	Administration
6-9-5	Ultimate Responsibility
6-9-6	Discharge Prohibitions
6-9-7	Suspension of MS4 Access
6-9-8	Industrial or Construction Activity Discharges
6-9-9	Monitoring of Discharges
6-9-10	Best Management Practices
6-9-11	Watercourse Protection
6-9-12	Notification of Spills
6-9-13	Enforcement
6-9-14	Severability

6-9-1: PURPOSE: The purpose of this Section is to provide for the health, safety, and general welfare of the residents and environment of the City of Otsego through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Section establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Section are:

- A. To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user
- B. To prohibit Illicit Connections and Discharges to the MS4.
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Section.
- D. To establish responsibility for failure and remediation, if necessary. (Ord. No. 09-07, July 13, 2009)

6-9-2: DEFINITIONS: For the purposes of this section, the following terms shall mean:

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

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

Construction Activity: Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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

Illegal Discharge: Any direct or indirect non-storm water discharge to the storm drain system.

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

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

Industrial Activity: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

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

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

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

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

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

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

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

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

Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a facility. (Ord. No. 09-07, July 13, 2009)

6-9-3: APPLICABILITY: This Section shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Otsego. (Ord. No. 09-07, July 13, 2009)

6-9-4: ADMINISTRATION: The City of Otsego shall administer, implement, and enforce the provisions of this Section. Any powers granted or duties imposed upon the City of Otsego may be delegated by the City Council of the City of Otsego to persons or entities acting in the beneficial interest of or in the employ of the City. (Ord. No. 09-07, July 13, 2009)

6-9-5: ULTIMATE RESPONSIBILITY: The standards set forth herein and promulgated pursuant to this Section are minimum standards; therefore this Section does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants. (Ord. No. 09-07, July 13, 2009)

6-9-6: DISCHARGE PROHIBITIONS:

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

Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

C. Prohibition of Illicit Connections:

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this Section if the person connects a line conveying sewage to the MS4, or allows such a connection to continue. (Ord. No. 09-07, July 13, 2009)

6-9-7: SUSPENSION OF MS4 ACCESS:

A. Suspension due to Illicit Discharges in Emergency Situations:

1. The City of Otsego may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States.
2. If the violator fails to comply with a suspension order issued in an emergency, the City of Otsego may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge:

1. Any person discharging to the MS4 in violation of this Section may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Otsego will notify a violator of the proposed termination of its MS4 access. The violator may petition the City of Otsego for a reconsideration and hearing.
2. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City of Otsego. (Ord. No. 09-07, July 13, 2009)

6-9-8: INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES: Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Otsego prior to the allowing of discharges to the MS4. (Ord. No. 09-07, July 13, 2009)

6-9-9: MONITORING OF DISCHARGES:

- A. Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

- B. Access to Facilities:
 - 1. The City of Otsego shall be permitted to enter and inspect facilities subject to regulation under this Section as often as may be necessary to determine compliance with this Section. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

 - 2. Facility operators shall allow the City of Otsego ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

 - 3. The City of Otsego shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City of Otsego to conduct monitoring and/or sampling of the facility's storm water discharge.

 - 4. The City of Otsego has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

 - 5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City of Otsego and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. Unreasonable delays in allowing the City of Otsego access to a permitted facility shall be a violation of a storm water discharge permit and of this Section. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the City of Otsego reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Section.
7. If the City of Otsego has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Section, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Section or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City of Otsego may seek issuance of a search warrant from any court of competent jurisdiction. (Ord. No. 09-07, July 13, 2009)

6-9-10: BEST MANAGEMENT PRACTICES:

1. The City of Otsego shall adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States.
2. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs.
3. Any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.
4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliant with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit. (Ord. No. 09-07, July 13, 2009)

6-9-11: WATERCOURSE PROTECTION: Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. (Ord. No. 09-07, July 13, 2009)

6-9-12: NOTIFICATION OF SPILLS:

1. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
2. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.
3. In the event of a release of non-hazardous materials, said person shall notify the City of Otsego in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Otsego within three (3) business days of the phone notice.
4. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years. (Ord. No. 09-07, July 13, 2009)

6-9-13: ENFORCEMENT:

- A. Notice. Whenever the City of Otsego finds that a person has violated a prohibition or failed to meet a requirement of this Section, the City of Otsego may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 1. The performance of monitoring, analyses, and reporting;

2. The elimination of illicit connections or discharges;
 3. That violating discharges, practices, or operations shall cease and desist;
 4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
 5. Payment of all expenses incurred by the City of Otsego related to administrative and remediation costs; and
 6. The implementation of source control or treatment BMPs.
- B. Action Required. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- C. Appeal. Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or their designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.
- D. Post Appeal Enforcement. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within ten (10) days of the decision of the City of Otsego upholding the decision of the authorized enforcement agency, then representatives of the City of Otsego shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.
- E. Abatement Costs. Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment according to State Statute. If the amount due is not paid within a timely manner as determined by the decision of the City of Otsego or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

- F. Injunctive Relief. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Section. If a person has violated or continues to violate the provisions of this Section, the City of Otsego may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- G. Compensatory Actions. In lieu of enforcement proceedings, penalties, and remedies authorized by this Section, the City of Otsego may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup or other actions approved by the City Council.
- H. Violations Deemed a Public Nuisance. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Section is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.
- I. Criminal Prosecution. Any person violating any provision of this chapter shall be punished pursuant to applicable State Statute regarding misdemeanor penalties, as amended, plus the costs of prosecution.
- J. Remedies Not Exclusive. The remedies listed in this Section are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Otsego to seek cumulative remedies. (Ord. No. 09-07, July 13, 2009)

6-9-14: SEVERABILITY: The provisions of this Section are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Section or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Section. (Ord. No. 09-07, July 13, 2009)