

CHAPTER 7
BUSINESSES AND LICENSES

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SECTION 1

RESERVED

(Ordinance 2012-07, June 11, 2012)

SECTION 2

3.2 PERCENT MALT LIQUORS

Section:

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7-2-1: DEFINITIONS: The definitions contained in Minnesota Statutes 340A.101 are hereby adopted and incorporated within this Section by reference. (Ord. 2008-21, November 24, 2008)

7-2-2: PROVISIONS OF STATE LAW ADOPTED: The provisions of Minnesota Statutes 340A et seq relating to licensing, consumption, sales, hours of sale, and all other matters pertaining to the retail sale, distribution and consumption of 3.2 percent malt liquor are adopted and made a part of this section as if set out in full. (Ord. 2008-21, November 24, 2008)

7-2-3: LICENSE REQUIREMENT:

- A. **Licenses.** No person, except wholesalers and manufacturers to the extent authorized by law, shall deal in or dispose of by gift, sale or otherwise, or keep or offer for sale, any 3.2 percent malt liquor within the City without first having received a license as hereinafter provided. Licenses shall be of three (3) kinds: regular "on-sale", temporary "on-sale", and "off-sale."
- B. **Temporary On-Sale.** Temporary on-sale licenses shall be granted only to bona fide clubs or charitable, religious or non-profit organization for the sale of 3.2 percent malt liquor for consumption on the premises only.

- C. **Regular On-Sale.** Regular on-sale licenses shall be granted only to clubs, drug stores, restaurants, hotels, bowling centers and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks. On-sale licenses shall permit the sale of 3.2 percent malt liquor for consumption on the premises only.
- D. **Off-Sale.** Off-sale licenses shall permit the sale of 3.2 percent malt liquor at retail in the original in the original package for consumption off the premises only. (Ord. 2008-21, November 24, 2008)

7-2-4: LICENSE APPLICATIONS:

A. Regular On-Sale and Off-Sale Licenses.

1. **Form.** Every application for such licenses shall be made to the City Clerk on a form supplied by the City and containing such information as the Clerk or Council may require.
2. **Proof of Insurance.** Applicants shall provide proof of insurance in accordance with the requirements of this Section.
3. **Evidence of Violations.** Every application for the issuance or renewal of a license shall include a copy of each summons received by the applicant under Minnesota Statutes 340A.802 during the preceding year.
4. **Process.** The City Clerk shall perform a background investigation on each applicant as required by applicable Minnesota Statutes, this Section and the directions of the City Council. The results of the investigation shall be reported to the Council for consideration before any hearing considering the issuance of said license.
5. **False Statements.** It shall be unlawful to make any false statements in an application.

B. Temporary On-Sale Licenses.

1. **Form.** Every application for such license shall be made to the City Clerk on forms supplied by the City and containing such information as the Clerk or Council may require.
2. **Affidavit of Fitness.** Applicant shall be required to provide a sworn affidavit of character. Said affidavit to be in a form approved by the City Attorney.

3. **Proof of Insurance.** Applicant shall provide proof of insurance in accordance with the requirements of this Section.
4. **Delegation of Council Authority.** The Council may delegate authority to issue temporary on-sale license to the Deputy Clerk, City Administrator or other such City official who reports directly to the Council and is responsible for the day to day management of the City's administrative affairs regardless of title.
5. **Process.** If the Council has delegated the authority to issue temporary on-sale licenses to a City official, that official shall review the required application materials and determine whether the applicant meets the requirements of this Section. If the applicant meets the requirements, the official shall inform the applicant of the denial, the reasons for the denial and of the applicant's right to appeal to the Council. If the Council has not delegated its authority to issue temporary on-sale licenses, the City Clerk shall receive the application, review it, and report to the Council. The Council shall conduct a hearing and decide the matter in the manner prescribed for regular licenses.
6. **False Statements.** It shall be unlawful to make any false statements in an application. (Ord. 2008-21, November 24, 2008)

7-2-5: LICENSE FEES:

- A. **Payment Required.** Each application for a license shall be accompanied by a receipt from the Clerk for payment in full of the required fee for the license. All fees shall be paid into the general fund of the City. Upon rejection of any application for a license, the Clerk shall refund the amount paid.
- B. **Expiration; Pro Rata Fees.** Every license except a temporary license shall expire on the last day of June of each year. Each license, except a temporary license, shall be issued for a period of one (1) year, except that if a portion of the license year has elapsed when the license is granted, the license shall be issued for the remainder of the year for a pro rata fee. In computing such fee, any unexpired fraction of a month shall be counted as one month. A temporary license shall be issued for a specific period in which a special event to which the sale is incident is being held and such period shall be stated on the license.
- C. **Fees.** The annual fee for an off-sale 3.2 percent malt liquor license shall be as established by Section 2-4-2.A.1 of the City Code.
- D. **Refunds.** No part of the fee paid for any license issued under this section shall be refunded except in the following instances upon application to the City Council within thirty (30) days from the happening of the event. There shall be refunded

a pro rata portion of the fee for the unexpired period of the license, computed on a monthly basis, when operation of the licensed business ceases not less than one (1) month before expiration of the license because of:

1. Destruction or damage of the licensed premises by fire or other catastrophe.
2. The licensee's illness.
3. The licensee's death.
4. A change in the legal status of the municipality making it unlawful for the licensed business to continue.
5. The business ceases to be lawful for a reason other than a license revocation.
6. The licensee ceases to carry on the licensed business under the license. (Ord. 2008-21, November 24, 2008)

7-2-6: GRANTING OF LICENSE:

- A. **Investigation and Hearing.** The City Council or its designees shall investigate all facts set out in the application. After such investigation, and upon review of the result of said investigation, the Council shall grant or refuse the application in its sole discretion.
- B. **Transfers.** Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license may be transferred to another place without the approval of the Council.
- C. **Proof of Financial Responsibility.** Prior to issuance of license, the applicant shall file with the City Clerk proof of financial responsibility with regards to liability imposed by Minnesota Statutes 340A.801, by filing with the City one (1) of the following:
 1. A certificate showing insurance against general liability and that imposed by Minnesota Statutes 340A.801 in the amount of fifty thousand dollars (\$50,000.00) coverage for bodily injury to any one (1) person in any one (1) occurrence, one hundred thousand dollars (\$100,000.00) coverage for two (2) or more persons in any one (1) occurrence, ten thousand dollars (\$10,000.00) coverage because of injury to or destruction of property of others in any one (1) occurrence, fifty thousand dollars (\$50,000.00) coverage for loss of means of support of any one (1) person in any one (1)

occurrence, and one hundred thousand dollars (\$100,000.00) for loss of means of support of two (2) or more persons in any one (1) occurrence.

2. A surety bond with minimum coverage as provided in Section 7-2-6.C.1 or a certificate of the State Treasurer or securities in accordance with Minnesota Statutes 340A.409.
 3. Every license shall further demonstrate proof of financial responsibility by filing the insurance certificate, surety bond, or State Treasurer's certificate with the Commission of Public Safety in compliance with Minnesota Statutes 340A.409, Subd. 1 except that if a license involves sales of 3.2 percent malt liquor of a prospective vendor who is not required by law to file such proof with the Commission of Public Safety, such proof need only be filed with the City Clerk.
 4. The liability insurance policy required by Section 7-2-6.C.1 of this section shall provide that it may not be canceled for:
 - a. Any cause, except for non-payment of premium, by either the insured or the insurer unless the canceling party has first given thirty (30) days notice in writing to the City of intent to cancel the policy; and
 - b. Non-payment of premium unless the canceling party has first given ten (10) days notice in writing to the City of intent to cancel the policy. The insurance certificate required by this section shall be approved as to form by the City Attorney.
- D. **Filing Violation.** The operation of an on-sale or off-sale, on-sale, or temporary on-sale 3.2 percent malt liquor business without having on file at all time the insurance, bond, or other security required by Section 7-2-6.C of this Code shall be grounds for immediate revocation of the license.
- E. **Temporary On-Sale License, Provision of Information.** Upon granting any temporary on-sale license, the issuance authority shall provide the applicant with a summary of the relevant provisions of this Chapter. Said summary shall include, at a minimum, any restriction on the sale or consumption of 3.2 percent malt liquor, restriction on the sale or consumption of 3.2 percent malt liquor, restrictions on transfer of the license, any time or date restrictions, restrictions on location of the point of sale, insurance requirements and any requirements for maintaining documents or other filings at the place of sale. (Ord. 2008-21, November 24, 2008)

7-2-7: PERSONS INELIGIBLE FOR LICENSE: No license shall be granted to any person made ineligible for such a license by State law.

7-2-8: PLACE INELIGIBLE FOR LICENSE:

- A. **General Prohibition.** No license shall be granted any place or any business ineligible for such a license under State law.
- B. **Specific Prohibition.** No license shall be granted for sale on any premises where a licensee has been convicted of the violation of ordinance, or of the state 3.2 percent malt liquor or liquor law, or where any license hereunder has been revoked for cause until one (1) year has elapsed after such conviction or revocation.
- C. **Delinquent Taxes and Charges.** No license shall be granted for operation on any premises on which taxes, assessments, or other financial claims of the City are delinquent and unpaid. (Ord. 2008-21, November 24, 2008)

7-2-9: CONDITIONS OF LICENSE:

- A. **General Conditions.** Every license shall be granted subject to the conditions in the following subdivisions and all other provisions of this Code and of any other applicable chapter of City or State law.
- B. **Sales to Minors or Obviously Intoxicated Persons.** No 3.2 percent malt liquor shall be sold or served to any obviously intoxicated person or to any person under twenty-one (21) years of age.
- C. **Consumption by Minors.** No person under twenty-one (21) years of age shall be permitted to consume 3.2 percent malt liquor on the licensed premises, nor shall any minor who has consumed 3.2 percent malt liquor or intoxicating liquor be permitted on the licensed premises.
- D. **Employment of Minors.** No persons under eighteen (18) years of age shall be employed on the premises of any establishment used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and/or soft drinks.
- E. **Gambling.** No gambling or any gambling device shall be permitted on any licensed premises, except for pull tabs, lottery, or other State-sanctioned gambling activities.
- F. **Interest of Manufacturers or Wholesalers.** No manufacturer or wholesaler of 3.2 percent malt liquor shall have any ownership of or interest in any establishment licensed to sell at retail contrary to the provisions of Minnesota Statutes 340A.301, 340A.308, or 340A.309. No retail licensee shall receive any benefit contrary to law from a manufacturer or wholesaler of 3.2 percent malt liquor w upon a retail licensee.

- G. **Liquor Dealer's Stamp.** No licensee shall sell 3.2 percent malt liquor holding or exhibiting in the licensed premises a Federal retail liquor dealer's special tax stamp unless he is licensed under the laws of Minnesota to sell intoxicating liquors.
- H. **Sales of Intoxicating Liquor.** No licensee who is not also licensed to sell intoxicating liquor and who does not hold a consumption or display permit shall sell or permit the consumption and display of intoxicating liquors on the licensed premises or serve any liquids for the purpose of mixing with intoxicating liquor. The presence of intoxicating liquors on the premises of such licensee shall be prima facie evidence of possession of intoxicating liquors for the purpose of sale; and the serving of any liquid for the purpose of mixing with intoxicating liquors shall be prima facie evidence that intoxicating liquor is being permitted to be consumed or displayed contrary to this Section.
- I. **Searches and Seizures.** Any peace officer, health officer, or other properly designated office or employee of the City, may enter, inspect, and search the premises of a licensee during business hours without a search and seizure warrant and may seize all intoxicating liquors found on the premises in violation of Section 7-2-9.H.
- J. **Licensee Responsibility.** Every licensee shall be responsible for the conduct of his place of business and shall maintain conditions of sobriety and order. The act of any employee on the licensed premises authorized to sell or serve 3.2 percent malt liquor shall be deemed the act of the licensee as well, and the licensee shall be liable for all penalties provided by this Section equally with the employee.
- K. **Banquet Rooms.** A regular on-sale license shall entitle the holder to serve 3.2 percent malt liquor in a separate room of the licensed premises for banquets or dinners at which are present not fewer than twenty-five (25) persons.
- L. **Insurance.** Compliance with financial responsibility requirements of State law and this Section is a continuing condition of any license granted pursuant to this Section.
- M. **Outdoor Seating Areas.** The issuance of a 3.2 percent malt liquor license pursuant to this Section shall be limited to the sale and consumption of alcoholic beverages inside of a structure on the licensed premises, unless the licensee applies for and receives approval from the city council for a patio to allow the sale and consumption outside of a structure on the licensed premises.
1. Regulations:
 - a. The outdoor seating area shall not be enclosed in such a manner that the space becomes an indoor area as defined by Minnesota state statute.

- b. The outdoor seating area shall be attached to the licensed premises and share at least one common wall with the licensed premises building in accordance with Minnesota state statute and shall not be part of a public street, sidewalk or other public grounds.
- c. Access to the outdoor seating area shall be directly from the licensed premises with no direct access other than emergency exits.
- d. The outdoor seating area shall be clearly delineated by an approved fence at least forty two eight (48") in height or some other approved structure or barrier that is compact and contiguous to prevent the ingress or egress of persons to and from the patio.
- e. Panic and fire exit hardware shall be installed on the emergency exit gates that are equipped with latches and shall comply with the building code.
- f. Screening shall be required if the premises is adjacent to a residential district, consistent with the fencing/screening/landscaping provisions of the Zoning Ordinance.
- g. Liquor, food, or music shall not be served, dispensed, possessed, displayed or furnished on a patio located within one hundred fifty feet (150') of a residential district between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M.
- h. The patio shall be in compliance with the building setback requirements of the respective zoning district of the Zoning Ordinance.
- i. The licensee shall pay the additional number of SAC and WAC units in accordance with the City Code for the additional seating according to the type of service to be provided.
- j. The premises shall be in compliance with the parking provisions of the Zoning Ordinance.
- k. The outdoor seating area shall have sufficient vehicle barriers installed to reduce the entry of vehicles into the patio if it is in direct contact with or immediately adjacent to a vehicle parking area.
- l. The outdoor seating area shall be in compliance with the noise amplification and dancing and outdoor entertainment provisions of the City.

- m. The outdoor seating area shall be in compliance with the exterior lighting provisions of the Zoning Ordinance.
- n. The outdoor seating area shall be in compliance with the sign provisions of this code.

2. Application; Site Plan:

- a. The outdoor seating area application shall contain a detailed description and site plan of the entire premises including the following:
 - 1) Distance of the proposed patio from all property lines;
 - 2) Current size and seating capacity of the licensed building;
 - 3) Proposed area of the outdoor seating area and seating capacity including table, chair, and aisle arrangements;
 - 4) Current parking capacity and additional number of parking stalls required;
 - 5) Additional number of SAC/WAC units as determined in accordance with the City Code;
 - 6) Fence and/or landscape barrier type and height;
 - 7) Emergency exit gate hardware and locations; and vehicle barrier type and locations.
- b. The complete outdoor seating area application and site plan must be submitted to the city clerk for review and comment by the city clerk, Zoning Administrator, and Department of Building Safety before submission to the City Council for consideration of approval.
- c. City staff will review the outdoor seating area application within thirty (30) days of receipt of a complete application for the applicable fire, building codes and zoning codes; past performance of the licensee in maintaining order and obeying applicable laws in the principal licensed premises; the adequacy of the proposal to provide for the safety of persons on the proposed premises; impacts on the surrounding properties including lighting and noise levels; and suitability of ingress and egress arrangements including control of persons entering and leaving for purposes of preventing consumption by minors.

- d. The outdoor seating area application shall require approval by a majority of the City Council.
- e. If the outdoor seating area application is approved by the City Council, the licensee will be required to obtain and pay for any necessary city permits and fees. (Ord. 2008-21, November 24, 2008)

7-2-10: HOURS OF OPERATION:

- A. **Allowed Hours.** No sale of 3.2 percent malt liquor shall be made on any Sunday between two o'clock (2:00) AM and ten o'clock 10:00AM nor between two o'clock (2:00) AM and eight o'clock (8:00) AM on Monday through Saturday.
- B. **Customers.** No person other than an employee of the licensed establishment shall remain on the premises of any licensed liquor establishment later than one-half (1/2) hour after sales are closed.
- C. **Employees.** Employees shall be off the premises by one (1) hour after sales are closed. Employees shall not re-enter the premises until six o'clock (6:00) AM the following day.
- D. **Identification of Employees.** The licensee shall post or display a legible list of the full names of all current employees. The list shall be displayed in the same location as the liquor license. (Ordinance 2012-15, adopted November 13, 2012)

7-2-11: CLUBS: No club shall sell 3.2 percent malt liquor except to members and to guests in the company of members. (Ord. 2008-21, November 24, 2008)

7-2-12: RESTRICTIONS ON PURCHASE AND CONSUMPTION:

- A. **Age Misrepresentations.** No person under twenty-one (21) years shall misrepresent their age for the purpose of obtaining 3.2 percent malt liquor.
- B. **Purchasing.** No person under the age of twenty-one (21) years shall purchase or attempt to purchase 3.2 percent malt liquor.
- C. **Inducing Purchase.** No person shall induce a person under twenty-one (21) years of age to purchase or procure 3.2 percent malt liquor.
- D. **Entering Licensed Premises.** It is unlawful for a person under the age of twenty-one (21) years to enter an establishment licensed under this Section in

order to purchase 3.2 percent malt liquor or have 3.2 percent malt liquor served or delivered to.

- E. **Procurement.** No person shall procure 3.2 percent malt liquor for any person under the age of twenty-one (21) years, except that a parent or guardian of a minor may give or furnish 3.2 percent malt liquor to that person solely for consumption in the household of the parent or guardian.
- F. **Possession.** No person under the age of twenty-one (21) years shall have 3.2 percent malt liquor in their possession with the intent to consume it at a place other than the household of his parent or guardian. Possession at a place other than the household of a parent or guardian is prima facie evidence of intent to consume it at a place other than the household of the parent or guardian.
- G. **Proof of Age.** Proof of age for purchasing or consuming 3.2 percent malt liquor may be established only by a valid drivers license or Minnesota identification card, or in the case of a foreign national, by a valid passport.
- H. **Public Consumption.** No person shall consume 3.2 percent malt liquor on a public street, public sidewalk, or public parking lot unless the location is under a temporary license in force when the consumption takes place.
- I. **Liquor Consumption and Display.** No person shall consume or display any intoxicating liquor on the premises of a licensee who is not also licensed to sell intoxicating liquors or who does not hold a consumption and display permit. (Ord. 2008-21, November 24, 2008)

7-2-13: SUSPENSION AND REVOCATION:

- A. **Hearing.** Except in cases of financial responsibility, no suspension or revocation of a license shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to Minnesota Statutes 14.57 to 14.69. No hearing is required if the offense only calls for a civil penalty. The licensee shall be provided notice of the opportunity to be heard but must affirmatively make such a request in writing within seven (7) days of receipt of notice, or the licensee has waived the right to a hearing. (Ordinance 2012-08, adopted June 11, 2012)
- B. **Penalties.**
 - 1. Upon a finding that a licensee of any license granted pursuant to the City's Liquor Ordinance has failed to comply with an applicable statute, regulation or ordinance relating to alcoholic beverages, the City Council may issue a civil penalty not to exceed two thousand dollars (\$2,000.00) and may suspend the license for up to sixty (60) days. (Ord. 2008-21, November 24, 2008)

2. The civil penalty and/or suspension imposed may, at the City Council's discretion, be based upon, but not to exceed the following guidelines related to the licensee's total number of violations within the preceding two (2) year period as follows:

Violation	Civil Fine	Suspension
1 st	\$1,000.00	None
2 nd	\$2,000.00	One (1) day
3 rd	\$2,000.00	Three (3) days
4 th	\$2,000.00	Five (5) days
5 th or more	\$2,000.00	Seven (7) days

3. Best Practices training required by Section 7-2-13.B.2 of this Section shall be completed within sixty (60) days of the City Council's decision to impose penalties or the license shall be suspended for seven (7) days in addition to other penalties, including completion of Best Practices training.
 4. Suspension of the license required by Section 7-2-13.B.2 of this Section shall be for those dates as determined by the City Council. (Ord. 2008-23, Dec. 8, 2008)
 5. In addition to the penalties set forth above, the City Council may also act to revoke a license for non-compliance with an applicable statute, regulation or ordinance.
- C. **Lapse of Insurance or Bond.** The lapse of required dram shop insurance or bond, or the withdraw of required cash deposit or securities shall effect an immediate suspension of a license issued pursuant to this Chapter without further action of the City Council. Any suspension under this paragraph shall continue until the City Council determines that the financial responsibility has been restored. (Ord. 2008-21, November 24, 2008)
- D. **Notice.**
1. A licensee shall be given ten (10) days written notice of a penalty, suspension or revocation action stating the charges against the licensee, the right to request a hearing as well as a proposed date, time and place of the hearing if required. In the case of a civil penalty only there shall be no right to a hearing. In the case of a proposed suspension or revocation of the license the notice shall state that the licensee has a right to a hearing only if they affirmatively request the hearing within seven (7) days of receipt of the notice and that the hearing is otherwise waived.
 2. Notice of cancellation, lapse of a current liquor liability policy or bond or withdrawal of deposited cash or securities shall also constitute notice to

the licensee of the impending suspension of the license. The holder of a license suspended under these circumstances may request in writing to the City Clerk a hearing to be held by the City Council not less than ten (10) days or more than sixty (60) days from the date the request is received by the City Clerk. (Ord. 2008-21, November 24, 2008)

7-2-14: PENALTY: Any person violating any provision of this Section is guilty of a misdemeanor and upon conviction shall be punished pursuant to penalty provided by State Statute, and as later amended, plus the costs of prosecution in any case. (Ord. 2008-21, November 24, 2008)

SECTION 3

INTOXICATING LIQUOR

Section:

7-3-1	Provisions of State Law Adopted
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7-3-7	Place Ineligible for Licenses
7-3-8	Conditions of License
7-3-9	Closing Hours
7-3-10	Restrictions on Purchase
7-3-11	Suspension and Revocation
7-3-12	Penalties

7-3-1: PROVISIONS OF STATE LAW ADOPTED: The provisions of Minnesota Statutes 340A and subsequent amendments to, relating to the definition of terms, licensing, consumption, sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor are adopted and made a part of this Section as if set out in full. (Ord. 91-08, March 11,1991)

7-3-2: LICENSE REQUIREMENT: No person, except a wholesaler or manufacturer, to the extent authorized under State license, shall directly or indirectly deal in, sell, or keep for sale in the City any intoxicating liquor without a license to do so as provided in this Section liquor licenses shall be of four (4) kinds: on-sale, off-sale, temporary on-sale, and on-sale wine license.

- A. **On-Sale Licenses.** On-sale licenses shall be issued only to hotels, clubs, restaurants, and exclusive liquor stores, and shall permit on-sale of liquor only.
- B. **Off-Sale Licenses.** Off-sale licenses shall be issued only to drug stores and exclusive liquor stores and shall permit off-sale of liquor only.
- C. **Temporary On-Sale License.** The City may issue to a club or charitable, religious, or other non-profit organization that has existed for at least three (3) years a temporary on-sale license for the sale of intoxicating liquor in connection with a social event within the City sponsored by the licensee, and subject to restrictions imposed by the State Liquor Act. The license may authorize the on-sale of intoxicating liquor for no more than three (3) consecutive days, and may authorize on-sale on premises not owned or permanently occupied by the

licensee. No such license is valid unless first approved by the Commissioner of Public Safety.

D. On-Sale Wine Licenses.

1. **General.** The City may issue an on-sale wine license to a restaurant having a seating capacity of at least twenty-five (25) guests, and shall permit only the sale of wine not exceeding fourteen (14) percent alcohol by, for consumption on the licensed premises only, in conjunction with the sale of food. No such license is effective until approved by the liquor control commissioner.
2. **Days of Sale.** An on-sale wine license shall authorize the sale of wine on all days of the week. (Ord. 91-08, March 11, 1991)
3. **Provision to Sell Intoxicating Malt Liquor.** The holder of an on-sale wine license who is also licensed to sell three point two (3.2) percent malt liquor on-sale and whose gross receipts are at least sixty (60) percent attributable to the sale of food, may also sell intoxicating malt liquor on-sale without obtaining an additional license. (Ord. 00-2, March 27, 2000)

E. Small Brewer, Off-Sale. Off-sale licenses for small breweries shall be issued only in accordance with Minnesota Statutes 340A.28

F. Brewpub License. Brewpub licenses shall be issued only in accordance with Minnesota statutes 340A.301.

G. Taproom License. Taproom licenses shall be issued only in accordance with Minnesota statutes 340A.301.

H. Use of City Owned Facilities. The City may authorize the holder of a regular on-sale intoxicating liquor license issued by the City or by an adjacent City to dispense intoxicating liquor at any convention, banquet, conference, meeting or social affair conducted on the premises of a sports, convention or cultural facility owned by the City or its instrumentalities having independent policy making and appropriating authority. For purposes of this Section, the said premises specifically includes, but is not limited to, the City Hall and its associated community center. The licensee must be engaged to dispense intoxicating liquor at an event held by a person or organization permitted to use the premises and may dispense intoxicating liquor only to persons attending the event. In no case shall any licensee dispense intoxicating liquor to any person attending or participating in an amateur athletic event held on the premises. (Ordinance 2015-11, adopted November 9, 2015)

7-3-3: LICENSE APPLICATION:

A. Form.

1. On-Sale License or On-Sale Wine License. Every application for an on-sale or on-sale wine license allowing the sale of liquor within the City of Otsego on other than a temporary basis shall state the name of the applicant, the applicant's age, representations as to the applicant's character with such references as the Council may require, the applicant's citizenship, the type of license applied for, the business, corporation, partnership or other organization controls other liquor licenses in other municipalities, whether or not the applicant has even been denied a liquor license or had a liquor license suspended or revoked in any other jurisdiction including a summary of facts leading to such actions(s), and such other information as the Council may require from time to time. Every application shall also include a copy of each summons and complaint under Minnesota Statutes 340A.802 received by the applicant or any business, corporation, partnership or other organization in which the applicant has been a principal, officer or owner during the preceding year. In addition to containing such information, the application shall be in the form prescribed by the Bureau of Criminal Apprehension and shall be verified and filed with the City Clerk. No person shall make a false statement in an application.

2. Temporary On-Sale License. Applications for a temporary on-sale license shall state the name of the applicant, the applicant's age, representations as to the applicant's character with such references as the Council may require, the applicant's citizenship, the type of license applied for, the business, corporation, partnership or other organization with which is sponsoring the event or occurrence requiring the license, the applicant's relationship to that organization, how long the organization has operated or existed within the City of Otsego, whether or not the applicant or the organization controls any other liquor licenses in the City of Otsego, whether or not the applicant has ever been denied a liquor license or had a liquor license suspended or revoked in the City of Otsego or any adjoining municipality including a summary of facts leading to such action(s), and such other information as the Council may require from time to time. Every application shall also include a copy of each summons and complaint under Minnesota Statutes 340A.802 received by the applicant or the organization during the preceding year. In addition to containing such information, the application shall be in the form prescribed by the Bureau of Criminal Apprehension. The application shall be accompanied by a sworn affidavit in a form approved by the City Attorney attesting to the facts of the application. No person shall make a false statement in an application. (Ord. 93-6, March 11, 1993)

Notwithstanding the requirements listed above, any charitable, religious or other non-profit organizations qualified under 501,c of the Internal Revenue Code, which is issued a temporary on-sale license pursuant to Section 7-3-2.C of this Code, need only provide a certificate showing insurance against general liability and that imposed by Minnesota Statutes 340A.801 in the amount of five hundred thousand dollars (\$500,000.00) coverage for bodily injury to any one person in any one occurrence, five hundred thousand dollars (\$500,000.00) coverage for two (2) or more persons in any one occurrence, one hundred thousand dollars (\$100,000.00) coverage because of injury to or destruction of property of others in any one (1) occurrence, one hundred thousand dollars (\$100,000.00) coverage for loss of means of support of any one (1) person in any occurrence, and one hundred thousand dollars (\$100,000.00) or loss of means of support of two (2) or more persons in any one (1) occurrence. (Ord. 94-10, June 27, 1994)

B. Insurance. Every applicant for the issuance of renewal of any on-sale or off-sale license shall demonstrate proof of financial responsibility for filing with the City one (1) of the following:

1. A certificate showing insurance against general liability and that imposed by Minnesota Statutes 340A.801 in the amount of one hundred thousand dollars (\$100,000.00) coverage for bodily injury to any one (1) person in any one (1) occurrence, one hundred fifty thousand dollars (\$150,000.00) coverage for two (2) or more persons in any one (1) occurrence, one hundred thousand dollars (\$100,000.00) coverage because of injury to or destruction of property of others in any one (1) occurrence, one hundred thousand dollars (\$100,000.00) coverage for loss of means of support of any one (1) person in any one occurrence, and one hundred thousand dollars (\$100,000.00) for loss of means of support of two (2) or more persons in any one (1) occurrence.
2. A surety bond with minimum coverage as provided in Section 7-3-3.B.1 a certificate of the State Treasurer that the licensee has deposited with the State Treasurer at one million five hundred thousand dollars (\$1,500,000.00) in cash or securities which may legally be purchased by savings banks or for trust funds having a market value of one million five hundred thousand dollars (\$1,500,000.00).
3. Every licensee shall further demonstrate proof of financial responsibility by filing the insurance certificate, surety bond, or State Treasurer's certificate with the Commissioner of Public Safety in compliance with Minnesota Statutes 340.409, Subd. 1, except that if a license involves sales of wine by a prospective vendor who is not required by law to file such proof with

the Commissioner of Public Safety, such proof need only be filed with the City Clerk.

4. The liability insurance policy required by Section 7-3-3.B.1 of this Section shall provide that it may not be canceled for any cause, except for non-payment of premium, by the insured or the insurer without first giving thirty (30) days written notice to the City, addressed to the Clerk. The policy shall also provide that it may not be canceled for non-payment of premium unless the canceling party first gives ten (10) days written notice to the City, addressed to the Clerk.
 5. The insurance certificate required by this Section shall be approved as to form by the City Attorney.
- D. **Filing Violation.** The operation of an on-sale or off-sale liquor business, or on-sale wine business, without having on file at all times the insurance bond or other security required by Section 7-3-3.B and 7-3-3.C of this Code shall be grounds for immediate revocation of the license. (Ord. 91-08, March 11, 1991)

7-3-4: LICENSE FEES:

- A. **Fees.** The fee for an annual on-sale liquor or wine license or temporary on-sale intoxicating liquor license shall be as established in Section 2-4-2.A of the City Code. (Ord. 2008-21, November 24, 2008)
- B. **Payment.** Each application for a license shall be accompanied by a receipt from the City Clerk for payment in full of the license fee and the investigation fee required under Section 7-3-5.B of this Code. All fees shall be paid into the general fund. If an application for license is rejected, the Clerk shall refund the amount paid as the license fee.
- C. **Term, Pro Rata Fee.** Each license shall be issued for a period of one (1) year except that if the application is made during the license year, a license may be issued for the remainder of the year for a pro rata fee, with any unexpired fraction of a month being counted as one (1) month. Every license shall expire on the last day of June.
- D. **Refunds.** No refund of any fee shall be made except as authorized by statute. (Ord. 93-6, July 26, 1993)

7-3-5: GRANTING OF LICENSES:

- A. **Delegation of Authority for Temporary Licenses.** The Council may delegate authority to issue temporary on-sale licenses for intoxicating liquor to the Deputy

Clerk, City Administrator or other such City official who reports directly to the Council and is responsible for the day to day management of the City's administrative affairs regardless of title. Such delegation shall be made by resolution of the Council. (Ord. 93-6, July 26, 1993)

- B. Investigation of Applicants Other Than Temporary On-Sale Licenses.** The Council shall investigate, or cause to be investigated, preliminarily all facts set out in any application for an on-sale license or any application for transfer of an existing on-sale license. If the Council deems it in the public interest to have an investigation made on a particular application for renewal of an on-sale license, it shall so determine. In any case, if the Council determines that a comprehensive background and financial investigation of the applicant is necessary, it may conduct the investigation itself or contract with another agency. No license shall be issued, transferred, or renewed if the results show to the satisfaction of the Council that issuance would not be in the public interest. (Ord. 93-6, July 26, 1993)
- C. Investigation of Applicants for Temporary On-Sale Licenses.** If the Council has delegated the authority to issue temporary on-sale licenses in accordance with Section 7-3-5.A of this Code, as amended, the delegee shall review the facts set out in the application, the insurance information provided by the applicant and the affidavit provided by the applicant. If the application is complete in form and the facts indicate the applicant is of good moral character and repute, the delegee shall grant the license without hearing by the Council or other process required by this Section. The delegee, in the delegee's discretion, may refer the application to the Council for its consideration in which case the application shall be considered in the manner provided for other licenses for sale of intoxicating liquor. If the application is denied, the applicant may appeal to the Council for a hearing on the matter. A request for a hearing on a denial must be made in writing and within thirty (30) days of the denial. The Council shall hear the applicant at the next regularly scheduled meeting after receipt of the notice of appeal. No temporary on-sale license is valid until such time as it, together with the security furnished by the applicant, has been approved by the Commissioner of Public Safety. (Ord. 93-6, July 26, 1993)
- D. Hearing.** The City Council or its designee(s), shall investigate all facts set out in the application and not investigated in the preliminary background and financial investigation conducted pursuant to Section 7-3-5.A. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its discretion, grant or refuse the application. No on-sale wine license or off-sale liquor license shall become effective until it, together with the security furnished by the applicant, has been approved by the Commissioner of Public Safety. (Ord. 91-08, March 11, 1991)
- E. Investigation Fee.** Along with the initial application fee or application for transfer of an existing on-sale license, the applicant shall be required to remit an

investigation fee of five hundred dollars (\$500.00) if it is determined that the investigation required by Minnesota Statutes 340A.412 can be accomplished within the State of Minnesota. If it is determined that said investigation will have to be conducted outside of the State, the investigation fee shall be the actual cost of such investigation not to exceed ten thousand dollars (\$10,000.00). All investigations shall be conducted by the City Council, the Wright County Sheriff's Office, or other agency as designated by the Otsego City Council. (Ord. 91-08, March 11, 1991)

- F. **Person and Premises License; Transfer.** Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person, or place without Council approval. Any transfer of stock of a corporate licensee is deemed a transfer of the license, and a transfer of stock without prior Council approval is grounds for revocation of the license. (Ord. 91-08, March 11, 1991)

7-3-6: PERSONS INELIGIBLE FOR LICENSE: No license shall be granted to any person ineligible for such license under State law. No more than one (1) intoxicating liquor license shall be directly or indirectly issued within the City to any one (1) person. (Ord. 91-08, March 11, 1991)

7-3-7: PLACE INELIGIBLE FOR LICENSE:

- A. **General Prohibition.** No license shall be issued for any place or any business ineligible for such a license under State law.
- B. **Delinquent Taxes and Charges.** No license shall be granted for operation on any premises on which taxes, assessments, or other financial claims of the City are delinquent and unpaid. (Ord. 2006-06, April 10, 2006)

7-3-8: CONDITIONS OF LICENSE:

- A. **In General.** Every license is subject to the conditions in the following subdivisions and all other provisions of this Section and of any other applicable ordinances, State law, or regulation.
- B. **Insurance.** Compliance with financial responsibility requirements of State law and of this Section is a continuing condition of any license granted pursuant to this Section.
- C. **Licensee's Responsibility.** Every licensee is responsible for the conduct of his place of business and the conditions of sobriety and order in it. The act of any employees in the licensed premises authorized to sell intoxicating liquor there is

deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this Section and the law equally with the employee.

- D. **Inspections.** Every licensee shall allow any peace officer, health officer, or properly designated officer or employee of the City to enter, inspect, and search the premises for the licensee during business hours without a warrant.
- E. **Display During Prohibited Hours.** No intoxicating beverage shall be displayed or exhibited upon the bar or tables or booths, within the premises of an establishment licensed for on-sale of intoxicating liquor during hours when the sale of liquor is prohibited.
- F. **Federal Stamps.** No licensee shall possess a Federal wholesale liquor dealer's special tax stamp or a Federal gambling stamp.
- G. **Minors.** No licensee shall allow any person under eighteen (18) years of age to sell or serve liquor. No licensee shall allow any person under the age of twenty-one (21) who has consumed intoxicating liquor or non-intoxicating malt liquor to be in or on the licensee's premises whether such person has consumed such beverages on the premises or any other place. (Ord. 91-08, March 11, 1991)
- H. **Outdoor Seating Areas.** The issuance of an intoxicating liquor license pursuant to this Section shall be limited to the sale and consumption of alcoholic beverages inside of a structure on the licensed premises, unless the licensee applies for and receives approval from the city council for a patio to allow the sale and consumption outside of a structure on the licensed premises. (Ord. 2008-21, November 24, 2008)

1. Regulations:

- a. The outdoor seating area shall not be enclosed in such a manner that the space becomes an indoor area as defined by Minnesota state statute.
- b. The outdoor seating area shall be attached to the licensed premises and share at least one common wall with the licensed premises building in accordance with Minnesota state statute and shall not be part of a public street, sidewalk or other public grounds.
- c. Access to the outdoor seating area shall be directly from the licensed premises with no direct access other than emergency exits.
- d. The outdoor seating area shall be clearly delineated by an approved fence at least forty two eight (48") in height or some other

approved structure or barrier that is compact and contiguous to prevent the ingress or egress of persons to and from the patio.

- e. Panic and fire exit hardware shall be installed on the emergency exit gates that are equipped with latches and shall comply with the building code.
 - f. Screening shall be required if the premises is adjacent to a residential district, consistent with the fencing/screening/landscaping provisions of the Zoning Ordinance.
 - g. Liquor, food, or music shall not be served, dispensed, possessed, displayed or furnished on a patio located within one hundred fifty feet (150') of a residential district between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M.
 - h. The patio shall be in compliance with the building setback requirements of the respective zoning district of the Zoning Ordinance.
 - i. The licensee shall pay the additional number of SAC and WAC units in accordance with the City Code for the additional seating according to the type of service to be provided.
 - j. The premises shall be in compliance with the parking provisions of the Zoning Ordinance.
 - i. The outdoor seating area shall have sufficient vehicle barriers installed to reduce the entry of vehicles into the patio if it is in direct contact with or immediately adjacent to a vehicle parking area.
 - k. The outdoor seating area shall be in compliance with the noise amplification and dancing and outdoor entertainment provisions of the City.
 - l. The outdoor seating area shall be in compliance with the exterior lighting provisions of the Zoning Ordinance.
 - m. The outdoor seating area shall be in compliance with the sign provisions of this code.
2. Application; Site Plan:
- a. The outdoor seating area application shall contain a detailed description and site plan of the entire premises including the following:

- 1) Distance of the proposed patio from all property lines;
 - 2) Current size and seating capacity of the licensed building;
 - 3) Proposed area of the outdoor seating area and seating capacity including table, chair, and aisle arrangements;
 - 4) Current parking capacity and additional number of parking stalls required;
 - 5) Additional number of SAC/WAC units as determined in accordance with the City Code;
 - 6) Fence and/or landscape barrier type and height;
 - 7) Emergency exit gate hardware and locations; and vehicle barrier type and locations.
- b. The complete outdoor seating area application and site plan must be submitted to the city clerk for review and comment by the city clerk, Zoning Administrator, and Department of Building Safety before submission to the City Council for consideration of approval.
- c. City staff will review the outdoor seating area application within thirty (30) days of receipt of a complete application for the applicable fire, building codes and zoning codes; past performance of the licensee in maintaining order and obeying applicable laws in the principal licensed premises; the adequacy of the proposal to provide for the safety of persons on the proposed premises; impacts on the surrounding properties including lighting and noise levels; and suitability of ingress and egress arrangements including control of persons entering and leaving for purposes of preventing consumption by minors.
- d. The outdoor seating area application shall require approval by a majority of the City Council.
- e. If the outdoor seating area application is approved by the City Council, the licensee will be required to obtain and pay for any necessary city permits and fees.

7-3-9: HOURS OF OPERATION:

- A. **Allowed Hours.** No sale of 3.2 percent malt liquor shall be made on any Sunday between two o'clock (2:00) AM and ten o'clock 10:00AM nor between two o'clock (2:00) AM and eight o'clock (8:00) AM on Monday through Saturday.
- B. **Customers.** No person other than an employee of the licensed establishment shall remain on the premises of any licensed liquor establishment later than one-half (1/2) hour after sales are closed.
- C. **Employees.** Employees shall be off the premises by one (1) hour after sales are closed. Employees shall not re-enter the premises until six o'clock (6:00) AM the following day.
- D. **Identification of Employees.** The licensee shall post or display a legible list of the full names of all current employees. The list shall be displayed in the same location as the liquor license. (Ordinance 2012-15, adopted November 13, 2012)

7-3-10: RESTRICTIONS ON PURCHASE AND CONSUMPTION:

- A. **Unlicensed Places.** No person shall make or prepare liquor for consumption in any public place or place of business unless it has a license to sell liquor on-sale or a permit from the Public Safety Commissioner under Minnesota Statutes 340A.414, and no person shall consume liquor in any such place.
- B. **Public Places.** No person shall consume liquor on a public street, public sidewalk, or public parking lot. No license holder shall allow the consumption of intoxicating liquor by its patrons within any parking lot owned or operated by any license holder. (Ord. 91-08, March 11, 1991)

7-3-11: SUSPENSION AND REVOCATION:

- A. **Hearing.** Except in cases of financial responsibility, no suspension or revocation of a license shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to Minnesota Statutes 14.57 to 14.69. No hearing is required if the offense only calls for a civil penalty. The licensee shall be provided notice of the opportunity to be heard but must affirmatively make such a request in writing within seven (7) days of receipt of notice, or the licensee has waived the right to a hearing. (Ordinance 2012-06, June 11, 2012)
- B. **Penalties.**
 - 1. Upon a finding that a licensee of any license granted pursuant to the City's Liquor Ordinance has failed to comply with an applicable statute,

regulation or ordinance relating to alcoholic beverages, or any nuisance or other violation of the City Code resulting from its business operations, the City Council may issue a civil penalty not to exceed two thousand dollars (\$2,000.00) and may suspend the license for up to sixty (60) days. (Ordinance 2012-17, adopted November 26, 2012)

2. The civil penalty and/or suspension imposed may, at the City Council's discretion, be based upon, but not to exceed the following guidelines related to the licensee's total number of violations within the preceding two (2) year period as follows:

Violation	Civil Fine	Suspension
1 st	\$1,000.00	None
2 nd	\$2,000.00	One (1) day
3 rd	\$2,000.00	Three (3) days
4 th	\$2,000.00	Five (5) days
5 th or more	\$2,000.00	Seven (7) days

3. Best Practices training required by Section 7-3-11.B.2 of this Section shall be completed within sixty (60) days of the City Council's decision to impose penalties or the license shall be suspended for seven (7) days in addition to other penalties, including completion of Best Practices training.
4. Suspension of the license required by Section 7-2-11.B.2 of this Section shall be for those dates as determined by the City Council. (Ord. 2008-23, Dec. 8, 2008)
5. In addition to the penalties set forth above, the City Council may also act to revoke a license for non-compliance with an applicable statute, regulation or ordinance including repeated nuisance or other violations of the City Code related to its business operation.
6. If any civil penalty, suspension or revocation of a City license is found to be specifically related to allowed business operations after one o'clock (1:00) AM, the City Council may act to suspend or revoke the sale of liquor after one o'clock (1:00) AM allowed by the City license and shall forward its findings and recommendations to the State of Minnesota for any applicable action pursuant to the State permit for operation after one o'clock (1:00) AM. (Ordinance 2012-17, adopted November 26, 2012)

- C. **Lapse of Insurance or Bond.** The lapse of required dram shop insurance or bond, or the withdraw of required cash deposit or securities shall effect an immediate suspension of a license issued pursuant to this Chapter without further action of the City Council. Any suspension under this paragraph shall

continue until the City Council determines that the financial responsibility has been restored. (Ord. 2006-12, August 14, 2006)

D. Notice.

1. A licensee shall be given ten (10) days written notice of a penalty, suspension or revocation action stating the charges against the licensee, the right to request a hearing as well as a proposed date, time and place of the hearing if required. In the case of a civil penalty only there shall be no right to a hearing. In the case of a proposed suspension or revocation of the license the notice shall state that the licensee has a right to a hearing only if they affirmatively request the hearing within seven (7) days of receipt of the notice and that the hearing is otherwise waived. (Ordinance 2012-08, June 11, 2008)
2. Notice of cancellation, lapse of a current liquor liability policy or bond or withdrawal of deposited cash or securities shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license suspended under these circumstances may request in writing to the City Clerk a hearing to be held by the City Council not less than ten (10) days or more than sixty (60) days from the date the request is received by the City Clerk. (Ord. 2006-12, August 14, 2006)

7-3-12: PENALTIES:

- A. **Gross Misdemeanors.** The following violations of this Section shall be gross misdemeanors and upon conviction shall be punished pursuant to the penalty provided by State Statute for a gross misdemeanor, and as later amended, plus the costs of prosecution in any case:
1. Selling alcoholic beverages without a license.
 2. Having a direct or indirect interest in more than one (1) off-sale license in the City.
 3. Selling, giving, or furnishing alcoholic beverages to an obviously intoxicated person.
 4. Selling, bartering, furnishing, or giving alcoholic beverages to a person under twenty-one (21) years of age.
 5. Violating any other provision of Minnesota Statutes 340A.702.

- B. **Misdemeanors.** Any violation of this Section or Minnesota Statutes 340A for which another penalty is not specified shall be a misdemeanor and shall be punished pursuant to the penalty provided by State Statutes for a misdemeanor, and as later amended, plus the costs of prosecution in any case. (Ord. 91-08, March 11, 1991)

SECTION 4

SUNDAY LIQUOR ORDINANCE

Section:

- 7-4-1 Special Sunday On-Sale License
- 7-4-2 Special License Fee
- 7-4-3 Sunday Hours
- 7-4-4 Conditions of License and Sale

7-4-1: SPECIAL SUNDAY ON-SALE LICENSE: Special on-sale licenses for the sale of intoxicating liquor and wine on Sundays shall be issued only to bowling centers, hotels, restaurants and clubs, as defined in Minnesota Statutes 340A.101. All special Sunday liquor licenses shall be issued for a period not to exceed one (1) year. All sales at such establishments shall be in accordance with Minnesota Statutes 340A.504, subdivision 3. (Ord. 98-8, Nov. 23, 1998)

7-4-2: SPECIAL LICENSE FEE: The fee for a special on-sale Sunday liquor license shall be as established in Section 2-4-2.A.1 of the City Code. (Ord. 2008-25, Dec. 8, 2008)

7-4-3: SUNDAY HOURS: The sale of on-sale intoxicating liquor on Sundays is allowed between the hours of ten o'clock (10:00) AM and one o'clock (1:00) AM on Monday. Establishments serving liquor on Sundays must obtain a special license as provided in Section 7-4-1 above. (Ord. 03-04, Feb. 24, 2003)

7-4-4: CONDITIONS OF LICENSE AND SALE: All special Sunday liquor licenses and Sunday liquor sales shall be subject to the conditions and requirements imposed by Minnesota Statutes Chapter 340A and other applicable State law and Section 7-3 of the Otsego City Code, as the same may from time to time be amended, including, but not limited to, such matters as financial responsibility, insurance requirements, application processes and penalties for violations. (Ord. 98-8, Nov. 23, 1998)

SECTION 5

SPECIAL EVENTS

Section:

7-5-1	Purpose and Findings
7-5-2	Definitions
7-5-3	Permit Required
7-5-4	Application for Permit
7-5-5	Issuance of Permit, Conditions, Posting
7-5-6	Exceptions to the Permit Requirement
7-5-7	Penalty for Violations, Enforcement

7-5-1: PURPOSE AND FINDINGS: The purpose of this Section is to protect the health, safety, and welfare of the citizens of Otsego by regulating the time, place and manner of conduct of special events and by establishing permit requirements for conducting special events as such are herein defined. The Otsego City Council finds that special events often exceed the City's capacity to provide usual City services. Such City services include, but are not limited to sanitary, fire, police, and utility service. The Otsego City Council also finds these regulations necessary to ensure that such events are conducted with sufficient consideration given to public safety issues, including, among other things, the impact of such events on parking and vehicular traffic within the City. (Ord. 98-5, July 13, 1998)

7-5-2: DEFINITIONS: For purposes of this Section, the following terms shall have the meanings given to them:

Person: A natural person, association, organization, club, group formed for a common purpose, partnership of any kind, limited liability company, corporation or any other legal entity.

Special Event: An outdoor gathering of at least fifty (50) individuals, whether on public or private property, assembled with a common purpose for a period of one (1) hour or longer. Special events include, but are not limited to, concerts, fairs, carnivals, circuses, parades, flea markets, marathons, walkathons, festivals, races, bicycle events, celebrations or any other gathering or event of similar nature. Special events do not include non-commercial events held on private property such as graduation parties or social parties. (Ord. 98-5, July 13, 1998)

7-5-3: PERMIT REQUIRED:

- A. No person shall hold, conduct or participate in a special event within the City, unless a Special Event Permit has been issued for such event upon timely written application made to the City.
- B. Not more than one (1) Special Event Permit shall be issued for a single property within a calendar year. (Ordinance 2014-07, adopted April 14, 2014)

7-5-4: APPLICATION FOR PERMIT: Written application for special event permits must be made at least ninety (90) days in advance of the event's proposed date in a form prescribed by the City Council. This application period shall not begin to run until a complete application has been filed with the City. Application forms shall be made available in the Office of the City Clerk. A fee, in the amount set by the City's fee schedule, shall be paid to the City along with the completed application form. Failure to provide a complete application or to pay the fee, as herein required, is sufficient reason to deny the special event permit. (Ordinance 2016-09, adopted August 8, 2016)

7-5-5: ISSUANCE OF PERMIT, CONDITIONS, NOTICE:

- A. Special event permits will be issued upon a majority vote of the City Council approval.
- B. The City Council may attach such reasonable conditions to the permit as are deemed necessary to protect the public health, safety and welfare. Such conditions may pertain to any of the following:
 - 1. Location and hours during which the event may be held.
 - 2. Sanitation / availability of potable water.
 - 3. Security / crowd management.
 - 4. Parking and traffic issues.
 - 5. Emergency and medical services.
 - 6. Clean up of premises and surrounding area / trash disposal.
 - 7. Insurance.
 - 8. Lighting.
 - 9. Fire service / safety.

10. Temporary construction, barricades / fencing.
11. Advertising / promotional materials and signs.
12. Noise levels.
13. Alcohol consumption.
14. Any other condition which the Council deems necessary.

C. Upon City Council approval, the City Clerk shall issue a permit to the person(s) named in the permit application.

1. The permit shall clearly state the name of a responsible individual and contact information during the event and the conditions, if any, imposed by the City Council.
2. Copies of the permit shall be posted in three (3) prominent locations upon the premises during the special event. (Ordinance 2014-07, Adopted April 14, 2014)
3. The property owner shall provide for a copy of the permit to be mailed not less than fourteen (14) days prior to the special event to all property owners as follows unless modified by the City Council:
 - a. Events occurring between
7:00AM and 10:00PM: 350 feet
 - b. Events occurring before
7:00AM or after 10:00PM: 2,500 feet

(Ordinance 2016-09, Adopted August 8, 2016)

7-5-6: EXCEPTIONS TO THE PERMIT REQUIREMENT: The permit requirement contained in this Section does not apply to the following:

- A. Special events sponsored and managed by the City of Otsego.
- B. Funerals and funeral processions.
- C. The grounds of any school, playground, place of worship, hotel, conference center, stadium, athletic fields, arena, auditorium, or similar permanent place of assembly when used for regularly established assembly purposes. (Ord. 98-5, July 13, 1998)

7-5-7: PENALTY FOR VIOLATIONS, ENFORCEMENT: Any person who violates any condition of a special event permit or any provision of this Section shall be guilty of a misdemeanor, punishable as prescribed by State law. Enforcement of this Section may, at the Council's discretion, take any of the following forms:

- A. Citation / criminal prosecution.
- B. Injunctions, declaratory judgments, or other civic remedies.
- C. Permit revocation.
- D. Disbursement of persons gathered. (Ord. 98-5, July 13, 1998)

SECTION 6

GAS FRANCHISE

Section:

7-6-1	Definitions
7-6-2	Franchise Generally
7-6-3	Conditions of Use
7-6-4	Indemnification
7-6-5	Assignment
7-6-6	Change in Form of Government
7-6-7	Severability
7-6-8	Notices
7-6-9	Previous Franchises Superseded

7-6-1: DEFINITIONS: The following terms shall mean:

City, City Council, City Clerk: These mean respectively, the City of Otsego, the City Council of the City of Otsego, and the City Clerk of the City of Otsego.

Company: Center Point Energy / Minnegasco, Inc., a Minnesota corporation, its successors and assigns.

Gas: Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.

Public Ground: All streets, alleys, public ways, utility easements, and public grounds of the City as to which it has the right to grant the use to the company. (Ord. 4, Nov. 19, 1984)

7-6-2: FRANCHISE GENERALLY:

- A. **Grant of Franchise:** There is hereby granted to the company, for a period of twenty (20) years, the right to import, manufacture, transport, distribute and sell gas for public and private use in the City, and for these purposes to construct, operate, repair and maintain in, on, over, under, and across the public ground of the City, all facilities and equipment used in connection therewith, and to do all things which are necessary or customary in the accomplishment of these objectives, subject to zoning ordinances, other applicable ordinances, permit procedures, customary practices, and the provisions of this franchise.
- B. **Effective Date; Written Acceptance.** This franchise shall be in force and effect from and after its passage and publication as required by law, and its

acceptance by the company in writing filed with the City Clerk within sixty (60) days after publication.

- C. **Non-Exclusive Franchise.** This is not an exclusive franchise.
- D. **Publication Expense.** The expense of publication of this Section shall be paid by the company.
- E. **Default.** If the company is in default in the performance of any material part of this franchise for more than ninety (90) days after receiving written notice from the City of such default, the City Council may, by ordinance, terminate all rights granted hereunder to the company. The notice of default shall be in writing and shall specify the provisions of this franchise under which the default is claimed and state the bases therefore. Such notice shall be served on the company by personally delivering the notice to an officer thereof at its principal place of business in Minnesota. If the company is in default as to any part of this franchise, the City may, after reasonable notice to the company and the failure of the company to cure the default within a reasonable time, take such action as may be reasonably necessary to abate the condition caused by the default, and the company agrees to reimburse the City for all its reasonable costs. Nothing in this section shall bar the company from challenging the City's claim that a default has occurred. In the event of disagreement over the existence of a default, the burden of proving the default shall be on the Township. (Ord. 4, Nov. 19, 1984)

7-6-3: **CONDITIONS OF USE:**

- A. **Use of Public Ground.** All utility facilities and equipment of the company shall be located, constructed, installed and maintained so as not to endanger or unnecessarily interfere with the usual and customary traffic, travel, and use of public ground, and shall be subject to those permit conditions the City has adopted for all utilities.
- B. **Restoration.** Upon completion of any work requiring the opening of any public ground, the company shall restore the same, including paving and its foundations, to as good condition as formerly, insofar as reasonably possible. The restoration shall be completed as promptly as weather permits, but if the company shall not promptly perform and complete the work, the City shall have the right to do so at the expense of the company; and the company shall, upon demand, pay to the City the reasonable cost of the work performed by the City.
- C. **Relocation of Utility Facilities.** The company shall promptly, with due regard for seasonal working conditions, permanently relocate its facilities or equipment whenever the City orders such relocation. If the relocation is a result of the proper exercise of the police power in grading, regarding, changing the location or shape of or otherwise improving any public ground or constructing or

reconstructing any sewer or water system therein, the relocation shall be at the expense of the company. If the relocation is not a result of the proper exercise of the police power, the relocation shall be at the expense of the City. If such relocation is done without an agreement first being made as to who shall pay the relocation cost, such relocation of the facilities by the company shall not be construed as a waiver of its right to be reimbursed for the relocation cost. If the company claims that it should be reimbursed for such relocation costs, it shall notify the City within thirty (30) days after receipt of such order. The City shall give the company reasonable notice of plans requiring such relocation. Nothing contained in this sub-section shall require the company to remove and replace its mains or to cut and reconnect its service pipe running from the main to a customer's premises at its own expense where the removal and replacement or cutting and reconnecting is made for the purpose of a more expeditious operation for the construction or reconstruction of underground facilities; nor shall anything contained herein relieve any person from liability arising out of the failure to exercise reasonable care to avoid damaging the company's facilities while performing any work in any public ground.

- D. **Relocation When Public Ground Vacated.** The vacation of any public ground shall not operate to deprive the company of the right to operate and maintain its facilities therein. Unless ordered under Section 7-6-3.C, the company need not relocate until the reasonable cost of relocating and the loss and expense of relocating resulting from such relocation are first paid to the company. When the vacation is for the sole benefit of the City in the furtherance of a public purpose, the company shall relocate at its own expense.
- E. **Street Improvements, Paving or Resurfacing.** The City shall give the company reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved. The notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the City will start the work, and, if more than one (1) street is involved, the order in which this work is to proceed. The notice shall be given to the company a sufficient length of time, considering seasonal working conditions, in advance of the actual commencement of the work to permit the company to make any additions, alterations or repairs to its facilities the company deems necessary. (Ord. 4, Nov. 19, 1984)

7-6-4: INDEMNIFICATION: The company shall indemnify, keep and hold the City, its elected officials, officers, employees, and agents free and harmless from any and all claims and actions on account of injury or death of persons or damage to property occasioned by the construction, maintenance, repair, removal, or operation of the company's property located in, on, over, under, or across the public ground of the City, unless such injury or damage is the result of the negligence of the City, its elected officials, employees, officers, or agents. The City shall not be entitled to reimbursement

for its costs incurred prior to notification to the company of claims or actions and a reasonable opportunity for the company to accept and undertake the defense. If a claim or action shall be brought against the City under circumstances where indemnification applies, the company, at its sole cost and expense, shall defend the City if written notice of the claim or action is promptly given to the company within a period wherein the company is not prejudiced by lack of such notice. The company shall have complete control of such claim or action, but it may not settle without the control of such claim or action, but it may not settle without the consent of the City, which shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City, and the company in defending any action on behalf of the City shall be entitled to assert every defense or immunity that the City could assert in its own behalf. (Ord. 4, Nov. 19, 1984)

7-6-5: ASSIGNMENT: The company, upon notice to the City shall have the right and authority to assign all rights conferred upon it by this franchise to any person. The assignee of such rights, by accepting such assignment, shall become subject to the terms and provisions of this franchise. (Ord. 4, Nov. 19, 1984)

7-6-6: CHANGE IN FORM OF GOVERNMENT: Any change in the form of government of the City shall not affect the validity of this franchise. Any governmental unit succeeding the City shall, without the consent of the company, automatically succeed to all of the rights and obligations of the City provided in this franchise. (Ord. 4, Nov. 19, 1984)

7-6-7: SEVERABILITY: If any portion of this franchise is found to be invalid for any reason whatsoever, the validity of the rest of this franchise shall not be affected. (Ord. 4, Nov. 19, 1984)

7-6-8: NOTICE: Any notice required by this franchise shall be sufficient if, in the case of notice to the company, it is delivered to Minnegasco Inc./Center Point Energy, attention Vice President, Minnesota Operations, 201 South Seventh Street, Minneapolis, MN 55402 and, in the case of the City, it is delivered to. (Ord. 4, Nov. 19, 1984)

7-6-9: PREVIOUS FRANCHISES SUPERCEDED: This franchise supercedes all previous franchises granted to the company or its predecessors. (Ord. 4, Nov. 19, 1984)

SECTION 7

MINING

Section:

7-7-1	Purpose and Intent
7-7-2	Definitions
7-7-3	Permit Required
7-7-4	Exemptions From Permit Requirements
7-7-5	Applications for Permits; Procedures, Contents of Applications
7-7-6	Council Review and Approval of Overall Plan
7-7-7	Termination of Permit
7-7-8	Permits; Renewal; Conditions
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7-7-10	Fees
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7-7-16	Operating Standards and Requirements
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7-7-18	Penalties

7-7-1: PURPOSE AND INTENT: The purpose of this ordinance is to promote the health, safety, and welfare of the community and to establish reasonable uniform limitations, standards, safeguards and controls for excavation and mining within the City. (Ord. 94-4, March 28, 1994)

7-7-2: DEFINITIONS: The following words, terms and phrases shall have the following meanings respectively ascribed to them:

Mine or Excavation: Mine or excavation shall have the following meanings:

- A. Any removal of the exposed layer of the earth's surface or the removal of any layer of soil under the exposed layer of the earth's surface, whether sod, dirt, topsoil, sand, gravel, soil, stone, or minerals performed with the intent of moving the same to another site as a raw material or processed product.
- B. Any area where the topsoil or overburden has been removed for the purpose of mining earthy deposits or minerals, yet the area has remained idle since the topsoil removal.

- C. Any area that is being used for stockpiling, storage, and processing of said, gravel, black dirt, clay and other minerals.

Overburden: Those materials which lie between the surface of the earth and material deposit to be extracted.

Rehabilitation: To renew land to self-sustaining long-term use which is compatible with contiguous land uses, present and future, in accordance with the standards set forth in this Chapter.

Topsoil: That portion of the overburden which lies closest to the earth's surface and supports the growth of vegetation.(Ord. 94-4, March 28, 1994)

7-7-3: PERMIT REQUIRED: Except as otherwise provided in this Chapter, it shall be unlawful for anyone to operate a mine or excavate without having first obtained a written permit from the City authorizing the same in accordance with this Chapter. Mining and excavation operations that predate this Chapter shall obtain a permit within six (6) months after the adoption of this Chapter. (Ord. 94-4, March 28, 1994)

7-7-4: EXEMPTIONS FROM PERMIT REQUIREMENTS: The following activities do not require a permit under this Chapter:

- A. Excavation for a foundation, cellar, or basement of a building if a building permit has been issued.
- B. Grading a lot in conjunction with building if a building permit has been issued.
- C. Excavation by the Federal, State, County or City government in connection with construction or maintenance of roads, highways, or utilities. This exemption applies only to Federal, State, County, or City government projects which have received plan and specification approval by the City as part of their plan review process.
- D. Curb cuts, utility hookups, or street openings for which another permit has been issued by the City.
- E. Excavation or grading for agricultural purposes.
- F. Excavation or grading in accordance with a development contract approved under the City's Subdivision Ordinance. If the development contract requires that a letter of credit or other security be posted, the letter of credit or other security must be posted before any excavation takes place.

G. Excavations of less than five hundred (500) cubic yards in a calendar year.
(Ord. 94-4, March 28, 1994)

7-7-5: APPLICATIONS FOR PERMITS; PROCEDURES, CONTENTS OF APPLICATIONS:

- A. An application for a mine or excavation permit shall be processed in accordance with the same procedures and requirements specified in the City Code relating to conditional use permits. If conflicts occur between this Chapter and the requirements for a conditional use permit as defined by the City Code, this Chapter shall prevail. An application for a conditional use permit is also required to be submitted for mining activities in conjunction with an application for a mining permit.
- B. An application for a mine or excavation permit shall contain:
1. A completed application form.
 2. The required fees.
 3. Cover sheet.
 - a. General. The cover sheet shall be twenty-two (22) inches by thirty-four (34) inches in size and be utilized to depict general items relevant to the project and plan set. As a minimum, the cover sheet shall contain the following:
 - 1) Title of the project.
 - 2) Sheet index for the plan set.
 - 3) Names, addresses and telephone numbers of the record owner(s), those in possession of vendees under contract for deed, any agent having control of the land, the applicant, land surveyor, geologist, engineer and preparer of the plan set.
 - 4) A location of vicinity map, at a scale of one (1) inch equals two thousand (2,000) feet or approved other, which depicts the project site relevant to major roadways and other significant surrounding features. A north arrow and scale shall be shown.
 4. Site plan.

- a. General. A standard twenty-two (22) inch by thirty-four (34) inch plan sheet shall be utilized for depicting required site plan data. A grid shall be incorporated onto the site plan to establish a coordinate system for referencing specific items on the plan. The site plan shall be at a scale of one (1) inch equals fifty (50) feet with a contour interval of one (1) foot. The site plan shall contain a north arrow, graphic scale, and date of preparation.
- b. Existing Conditions. As a minimum, the following items shall be depicted on the site plan:
 - 1) Boundary lines to include bearings, distances, curve data, and total acreage of the site.
 - 2) Existing zoning classifications for land in and abutting the site.
 - 3) Location, right-of-way width and names of existing or platted streets or other public ways, parks and other public lands, permanent buildings and structures, easements and corporate lines. The aforementioned items shall be shown for the site and of all land located within three hundred fifty (350) feet of the boundary of the site.
 - 4) Location and sizes of underground utilities, culverts and other below grade structures and facilities within the site area and to a distance of one hundred (100) feet beyond the site's boundaries.
 - 5) Water courses, marshes, wooded areas, rock outcrops, power transmission poles and lines, telephone poles and lines and other related surface items which will affect the mining operation.
 - 6) Location of exploratory subsurface borings and tests to ascertain subsurface soil, rock and groundwater conditions. This shall be done to augment test results submitted with the application.
 - 7) One hundred (100) year flood elevations, floodway and flood fringe areas.
 - 8) Wetlands in or within one hundred (100) feet of the site.

- 9) Names, address and PID number of all property owners within three hundred fifty (350) feet of the property is located within platted areas of the City or within five hundred (500) feet of the property if located in non-platted areas of the City.
- 10) A certificate of survey prepared by a professional land surveyor licensed in the State of Minnesota. The certificate shall include the legal description of the property, a signed statement of certification, the registration number of the preparer, and date prepared.

c. Proposed Mining Features.

- 1) Location of proposed permanent and temporary structures to be utilized in the operation. This shall include sanitary facilities, offices, trash receptacles, processing plants and living quarters.
- 2) Parking areas for employee vehicles and related equipment.
- 3) Vehicular circulation plan for the site.
- 4) Grading plan which depicts the limits of the material extraction from the site with a minimum of one (1) foot contours.
- 5) Intermittent erosion and sedimentation control method.
- 6) Location of temporary and permanent fencing and gates.
- 7) Drainage swales, culverts or other devices utilized for routing off-site flows around the site.
- 8) Those areas of the site to be utilized for storage of topsoil and overburden.
- 9) Yearly limits or extraction if operation is scheduled to last longer than one (1) year.

5. Closure/Rehabilitation Plan.

- a. The closure/rehabilitation plan shall contain the same information as required for the site plan without showing the proposed mining features. The plan shall contain the following additional items:

- 1) Proposed final contours at one (1) foot intervals. Typical grades shall be noted for all slopes.
- 2) Those areas of the site to be utilized for storage of topsoil and overburden if staged restoration is planned.
- 3) Areas of revegetation shall be noted. Areas to be landscaped and type of landscaping shall be notes.
- 4) Limits of staged restoration if mining operations are scheduled to last longer than one (1) year.
- 5) All items required by the current City of Otsego Zoning Ordinance for the proposed use of the land.
- 6) The closure/rehabilitation plan shall be updated and submitted as an "as-built" drawing upon completion of site restoration procedures.

6. Cross Sections.

- a. Cross sections shall be drawn to depict pre-mining grades, proposed post-mining grades and proposed closure/rehabilitation grades. Cross sections shall be drawn both horizontally and vertically with reference to the site plan grid. Cross sections shall be evenly spaced across the extraction site as depicted on the site plan and have an interval spacing of fifty (50) feet maximum. A minimum of three (3) cross sections each way shall be depicted.
- b. All cross sections shall be referenced to the grid system shown on the site plan. The scale for the cross sections shall be one (1) inch equals fifty (50) feet horizontal and one (1) inch equals five (5) feet vertical. Cross sections shall be drawn on twenty-two (22) inch by thirty-four (34) inch mylar.
- c. The cross sections shall be updated and resubmitted upon completion of mining or extraction operations and upon completion of closure/rehabilitation procedures.

7. Traffic Control Plan. A traffic control plan shall be submitted for all operations which will access onto a public roadway. The traffic control plan shall conform substantially to the latest edition of the Minnesota Manual on Uniform Traffic Control Devices for Streets and Highways as published by the Minnesota Department of Transportation. The plan shall be prepared by a professional civil engineer and contain the following:

- a. General. A standard twenty-two (22) inch by thirty-four (34) inch plan sheet shall be utilized to depict the following information:
 - 1) North arrow.
 - 2) Scale.
 - 3) Title block.
 - 4) Name, address, telephone number, and registration number of person responsible for preparing the plan.
 - 5) Location map.
 - b. Plan. The plan portion of the traffic control plan shall depict the following:
 - 1) Roadway right-of-way width for all affected roadways.
 - 2) Roadway width and asphalt width of all roadways affected.
 - 3) Location and type of traffic control signs, signals, markings, barricades, channelizing devices, lighting devices and flagging personnel. Location shall be in reference to roadway intersections and type shall reference the Mn/MUTCD.
 - 4) Notes referencing minimum mandatory requirements as dictated by the Mn/MUTCD.
 - 5) Details for each type of traffic control sign or device utilized.
8. Narrative.
- a. A narrative shall be provided to augment the required plan sheets. The narrative shall be prepared, signed and dated by a professional civil engineer. The narrative shall be titled, dated and referenced to the permit application. As a minimum, the following items must be discussed in the narrative:
 - 1) A time schedule for completion of all mining related activities. This shall include the start date, extraction completion date, and final closure/rehabilitation date. A schedule of typical hours of operation during the day shall be discussed, typical days of the week and typical weeks of the year shall be submitted.

- 2) A description and quantity of material to be excavated. This shall be documented by a sieve analysis, test hole logs and gradation curve performed by certified and independent testing laboratory. The quantity of material shall be on a per year basis if mining operations are scheduled to last longer than one (1) year.
- 3) The depth of the water table throughout the area. This shall be documented by boring logs recorded by a certified and independent testing laboratory.
- 4) The purpose and plan of operation. This shall include a description of the nature of any plants, source of water and means of water disposal.
- 5) Travel routes to and from the site. This shall be augmented with a legible sketch depicting the same.
- 6) A plan for drainage control. This shall include an analysis of the impact of the mining operation on the watershed drainage. Drainage calculations utilizing the SCS method of determining flows and pond sizing shall be provided for review.
- 7) A plan for mitigating water runoff erosion shall be detailed for the site. This shall include erosion control methods to be utilized during the mining operation and during rehabilitation of the site. A material list shall be provided for a typical erosion control strategy. The proposed use of silt fences, straw bales, etc. shall be discussed.
- 8) A dust control strategy shall be discussed and include the following: type of equipment to be utilized, supply of water or other dust-preventative material to be utilized, where equipment is to be stored and location of water supply. These items shall be discussed as they apply to the site and to haul routes and streets.
- 9) A street maintenance and haul material spill clean up plan. This shall include equipment such as shovels, brooms, etc. which will be utilized for off-site cleanup. The location that vehicles and equipment will be stored. The personnel to be utilized for spill cleanup (i.e. will the same personnel utilized for mining operations be utilized for clean up operations?).

Typical schedules for maintenance of streets and roadways shall be discussed.

- 10) A plan for storing topsoil and preventing wind erosion of the same.
- 11) A plan for preventing wind erosion at the site. This shall include standard details depicting erosion control methods such as blankets, dust prevention materials, etc.
- 12) A discussion of the proposed use of the land following closure/ rehabilitation of the site.
- 13) A closure/rehabilitation plan which will provide for the orderly and continuing rehabilitation of all disturbed areas. Typical details may be included and the site rehabilitation plan referenced in the narrative. The narrative shall discuss, as a minimum, the following:
 - a) If fill material is to be imported to eliminate low areas, a gradation curve shall be provided for the imported soil.
 - b) The type and extent of landscaping to be utilized.
 - c) The timetable for which site closure/rehabilitation is to occur. This shall include dates for finalizing grading, dates for planting and seeding, and dates for completion of erosion control methods. A generalized schedule shall be provided describing frequency of return visits to the site for continuing maintenance. If mining operations are scheduled to continue longer than one (1) year, a staged restoration plan shall be discussed.
 - d) The type of erosion control and sedimentation control to be utilized between final grading and turf establishment.
- 14) Special conditions which may be specified to the site.

9. Attachments.

- a. The following shall be attached to the application for permit:

- 1) Soil logs. Soil logs shall be prepared by a certified and independent testing agency. The test bores shall be performed in the quantity required by this regulation. Each test bore shall show, as a minimum requirement, the following:
 - a) Depth of bore.
 - b) Soil stratifications.
 - c) Type of soil for each stratification.
 - d) High water mark.
 - e) Existing water table.
- 2) Sieve analysis. A sieve analysis shall be performed at each test bore location on the material to be mined. A gradation curve shall then be plotted and the results submitted with the soil logs.
- 3) A certified abstract listing the names of all landowners owning property within three hundred fifty (350) feet of the boundary of the subject property if located within platted areas of the City or within five hundred (500) feet of the property if located in non-platted areas of the City.
- 4) A written right-of-entry which cannot be terminated for one (1) year after the anticipated closure date to the City for its officers or agents to enter the land for the purpose of determining compliance with all applicable conditions imposed on the operation. The right-of-entry shall be submitted with the application for permit. One (1) set of keys to locked gates utilized for limiting site access shall be delivered to the City.
- 5) The plan set shall be submitted to all affected agencies for their review and comments related to the proposed mining activities. The applicant shall be responsible for submitting any other required items to the individual agencies for their review. Prior to a mining permit being issued, comment letters must be received from the following agencies:
 - a) Wright County Highway Department.
 - b) Minnesota Department of Natural Resources.

- c) Minnesota Pollution Control Agency.
 - d) Minnesota Department of Transportation.
 - e) United States Army Corps of Engineers.
 - f) Other affected agencies.
- 6) A complete photographic log shall be submitted with the application for permit by the operator. Photographs shall be taken at close enough range to allow for details of key items to be identified. A legend shall be supplied with each photograph describing the view depicted. Each photograph shall contain a point of reference which will not be disturbed during mining operations for later use in site analysis. The photographs shall detail the following:
- a) Existing on-site conditions and significant features.
 - b) Site perimeter with views depicting adjacent properties.
 - c) Downstream drainage facilities which may be affected by mining operations.
 - d) Site access and views of the roadway accessed in the immediate vicinity of the access point. (Ord. 94-4, March 28, 1994)

7-7-6: COUNCIL REVIEW AND APPROVAL OF OVERALL PLAN: The City Council shall review the permit application and shall approve the permit if it is in compliance with this Chapter, the City's Zoning Ordinance and other applicable laws, ordinances, and regulations. The Council may attach conditions to the permit approval to promote safety and prevent nuisance conditions. The rehabilitation plan shall only be approved if it is consistent with the uses allowed in the City's Comprehensive Plan and Zoning Ordinance. (Ord. 94-4, March 28, 1994)

7-7-7: TERMINATION OF PERMIT:

- A. The material excavation permit may be terminated for violation of this Chapter or any conditions of the permit. No permit may be terminated until the City Council has held a public hearing to determine whether the permit shall be terminated, at which time the operator shall be afforded an opportunity to contest the termination. The City Council may establish certain conditions, which if not

complied with, will result in immediate suspension of operations until the public hearing to consider termination of the permit can be held. Should the operator, for whatever reason, continue operations after termination or suspension of the permit, said operator shall be responsible for all costs, including reasonable attorney's fees, expended by the City in enforcing the terms and provisions of this Ordinance.

- B. The permit shall terminate on the date specified by the applicant on the application for permit.
- C. It shall be unlawful to conduct mineral extraction or excavation after a permit has been terminated or suspended. (Ord. 94-4, March 28, 1994)

7-7-8: PERMITS; RENEWAL; CONDITIONS:

- A. Request for renewal of a permit shall be made sixty (60) days prior to the expiration date. If application or renewal is not made within the required time, all operations shall be terminated, and reinstatement of the permit may be granted only upon compliance with the procedures set forth in this Chapter for an original application.
- B. A permit may be approved or renewed subject to compliance with conditions in addition to those set forth in this Chapter when such conditions are reasonable and necessary to ensure compliance with the requirements and purpose of this Chapter. When such conditions are established, they shall be set forth specifically in the permit. Conditions may, among other matters, limit the size, kind or character of the proposed operation, require the construction of structures, require the staging of extraction over a time period, require the alteration of the site design to ensure compliance with the standards, require a financial guarantee by the operator to ensure compliance with these regulations in this article or other similar requirements. (Ord. 94-4, March 28, 1994)

7-7-9: ISSUANCE OF PERMIT IMPOSES NO LIABILITY ON CITY AND RELIEVES THE PERMITTEE OF NO RESPONSIBILITIES, ETC.: Neither the issuance of a permit under this section, nor compliance with the conditions thereof or with the provisions of this section shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor impose any liability or damage to persons or property. A permit issued pursuant to this section does not relieve the permittee of the responsibility of securing and complying with any other permit which may be required by any other law, ordinance or regulation. (Ord. 94-4, March 28, 1994)

7-7-10: FEES: Fees shall be required for the examination and review of applications for permits and the inspections of mining operations for compliance with the conditions of this Ordinance. A fee shall be paid at the time of application for permit. A fee based upon the quantity of material removed from the site as a result of the mining operation shall be paid according to the appropriate schedule listed below:

- A. If mining operations are scheduled to continue for a period of time less than one (1) year, the fee shall be paid within thirty (30) days of completion of mining activities.
- B. If mining operations are scheduled to continue for a period of time longer than one (1) year, a fee shall be paid prior to January 31 each year for materials removed from the site prior to December 31 of the previous year. A fee shall be paid within thirty (30) days of completion of mining activities for materials removed that calendar year.

The fee shall be paid at a rate per cubic yard of material excavated. The amount of material excavated shall be rounded up to the nearest one thousand (1,000) cubic yards and multiplied the rate to determine the required fee. The quantity of material excavated shall be substantiated and certified by the applicant's engineer. Quantity calculations based upon pre-mining site conditions and current topographic data shall be submitted with each payment for City review.

The initial fee and rate per cubic yard of material excavated shall be determined by resolution of the City Council. The City Council may change the initial fee and rate per cubic yard of material excavated, from time to time, also by resolution. Such initial fees and fees related to the rate per cubic yard of material removed shall be paid to the City and deposited to the credit of the general fund. (Ord. 94-4, March 28, 1994)

7-7-11: FINANCIAL GUARANTEE: Prior to the approval and issuance of a permit, there shall be executed by the operator and submitted to the City Clerk an agreement to construct such required improvements, to dedicate such property or easements if any, to the City and to comply with such conditions as may have been established by the City Council. Such agreement shall be accompanied by a financial guarantee acceptable to the City Zoning Administrator in the amount of the established costs of complying with the agreement. The said guarantee shall be in the form of a certified check or irrevocable letter of credit, and shall be provided for guaranteeing completion and compliance with the conditions set forth in the permit within the time approved by the City Council. The adequacy, conditions and acceptability of any certified check or irrevocable letter of credit shall be determined by the City Zoning Administrator and shall be reviewed annually by the City. The City may direct the amount of the financial guarantee to be increased to reflect inflation or changed conditions. The City shall determine the required amount of the financial guarantee based upon the cost or value of the work to initiate mining operations, continue mining operations and complete closure/rehabilitation procedures. (Ord. 94-4, March 28, 1994)

7-7-12: STANDARDS – EXTRACTION SITE LOCATION: Operations permitted under this section shall not be conducted within:

- A. Fifty (50) feet of an existing street or highway.
- B. Thirty (30) feet of the right-of-way on an existing public utility.
- C. Fifty (50) feet of the boundary of any zone where such operations are not permitted.
- D. Thirty (30) feet of the boundary of an adjoining property not in mining use; or as directed by the City Council (Ord. 94-4, March 28, 1994)

7-7-13: SOILS INVESTIGATIONS: A soils study shall be performed to aid in the analysis of the application for permit. Test borings shall be performed on the proposed mining site to determine the subsurface conditions which exist at the site. The number of test bores required shall be determined by the amount of land affected by the mining operations. Three (3) test bores shall be excavated for each site. One (1) additional test bore will be required for each acre of land affected by the mining operation. Test bores shall extend to five (5) feet below the lowest limits of the proposed mining excavation or to the water table. The following information shall be noted at each test bore location:

- A. Depth of bore.
- B. Depth to high water mark.
- C. Depth to water table.
- D. Soil stratification and soil type within each stratification. Thickness of each strata.

A sieve analysis shall be performed at each test bore on all materials to be removed from the site. A gradation curve shall be developed based on the sieve analysis. All test results shall be submitted to the City for use in reviewing the application for permit. (Ord. 94-4, March 28, 1994)

7-7-14: FENCING: Where mining operations are to continue for a period of one (1) year or longer or are located in or adjacent to a residential district, perimeter fencing of the extraction site will be required. A lockable gate will be provided across the access to the site. The gate shall be locked when mining operations are not in progress. The perimeter fencing and gate construction shall conform to Section 2557 of the Standard Specifications for Construction and Supplemental Specifications as published by the Minnesota Department of Transportation.

The perimeter fencing and gate shall be woven fire fence in accordance with standard plate No. 9320G of the Minnesota Department of Transportation Standard Plates Manual.

Temporary safety fencing shall be required where unsafe conditions warrant and are expected to last less than five (5) days. If unsafe conditions last longer than five (5) days, perimeter fencing shall be installed. Unsafe conditions shall be considered as follows:

- A. Where collections of water are one and one-half (1-1/2) feet in depth or greater.
- B. Where slopes exceed three (3) feet horizontal to one (1) foot vertical.
- C. Where machinery is left unattended for more than eight (8) hours.
- D. Other similar situations deemed hazardous by the City's Engineer.

Temporary safety fencing may be snow fencing forty (40) inches high or other fencing approved by the City Engineer. Perimeter fencing may be required by the City Engineer if unsafe conditions warrant. (Ord. 94-4, March 28, 1994)

7-7-15: APPEARANCE AND SCREENING AT THE EXTRACTION SITE: The following standards are required at the extraction site of any operation permitted under this article:

- A. Machinery shall be kept in good repair.
- B. Abandoned machinery, inoperable equipment and rubbish shall be removed from the site at the end of each day's operations.
- C. All buildings and equipment that have not been used for a period of one (1) year shall be removed from the site.
- D. All equipment and temporary structures shall be removed and dismantled no later than ninety (90) days after termination of the extraction operation and expiration of the permit.
- E. Where practical, stockpiles of overburden and materials shall be used to screen the extraction.
- F. The perimeter of the site shall be planted or otherwise screened when such is determined by the City Council to be necessary.

- G. Existing tree and ground cover shall be preserved to the extent feasible, maintained and supplemented by selective cutting, transplanting of trees, shrubs, and other ground cover along all setback areas. (Ord. 94-4, March 28, 1994)

7-7-16: OPERATING STANDARDS AND REQUIREMENTS: The following operating standards and requirements shall be observed at the extraction site at all times. Failure to comply with any of the following items constitutes a violation of a mining permit and is cause for termination of the permit.

- A. **Noise.** All equipment used in conjunction with the mining operation shall be constructed, maintained and operated in such a manner as to minimize noise levels at and adjacent to the site. The maximum noise level at the perimeter of the site shall be within the limits set by the Minnesota Pollution Control Agency and the Federal Environment Protection Agency (MnPCA). If a violation is suspected or known to exist, the MnPCA will be notified and mining operations terminated.
- B. **Hours of Operation.** Extraction and hauling operations shall be performed only between the hours of seven o'clock (7:00) AM and six o'clock (6:00) PM. No work shall be performed on Saturdays, Sundays or holidays. Written permission must be obtained from the City for a variance to these conditions. Permissions is not required for minor work which may be required to insure safety at the site.
- C. **Air and Water Pollution.** Operators shall comply with all applicable City, County, State, and Federal regulations for the protection of air and water quality. Minnesota Pollution Control Agency regulations for the protection of air and water quality shall be observed. No waste products shall be deposited into any lake, stream or natural drainage system. All wastewater shall pass through a sedimentation basin before drainage into a stream. Downstream drainageways affected by sedimentation due to the mining operation shall be dredged and restored by the operator. If a violation is suspected or know to exist, the MnPCA will be notified and mining operation terminated. Sedimentation ponds, silt fences and straw bales shall be utilized to control sedimentation from the site. Methods of sedimentation control shall be depicted on the site plan. The narrative shall include calculations or explanations for the method utilized.
- D. **Topsoil.** All topsoil shall be retained at the site until complete rehabilitation of the site has taken place according to the approved rehabilitation plan. Topsoil which is to be used shall be free of roots, brush, weeds, debris and stones larger than one (1) inch in diameter. Topsoil shall be protected from erosion, degradation and mixing with other on-site materials. Topsoil borrow, if required, shall be in accordance with the Minnesota Department of Transportation Standard Specifications for Construction and Supplemental Specifications Section 3877. Topsoil shall be placed to an in-place depth of four (4) inches over all areas requiring reseeding, resodding or other vegetative restoration.

- E. **Dust Control.** All equipment used in the mining operation shall be maintained and operated in such a manner as to minimize dust conditions which are annoying to adjacent property owners. The access to the site shall be paved, treated or watered in order to minimize dust conditions. The operator shall maintain a water truck or similar equipment which may be utilized for dust control at or near the site for the duration of the mining operation. A reliable source of water shall be obtained prior to mining operations commencing and be maintained during mining operations. Dust prevention and control measures shall be utilized at all times by the operator. If dust becomes a safety concern or a public nuisance, the City may order the operator to commence additional dust prevention measures or temporarily suspend mining operations. Citizen complaints will also serve as cause for the operator to affect additional dust control measures. Continued neglect of dust control by the operator shall be cause for termination of the mining permit. A dust prevention plan shall be outlined in the narrative to the application for permit.
- F. **Site Appearance.** All buildings, structures and plants used for the mining operation shall be maintained in such a manner as to assure that they will not become dilapidated. Weeds and any other unsightly or noxious vegetation shall be cut or trimmed weekly or as necessary to preserve a neat appearance and to prevent seeding on adjoining property. Stockpile excavated materials in a manner that will cause the least amount of damage to adjacent lawns, grassed areas, gardens, shrubbery or fences. No trees, except those specifically shown on the approved site plan to be removed, shall be removed without the express acceptance of the City Engineer.
- G. **Off-Site Protection and Traffic Control.**
1. The operator shall insure that no objectionable material will be allowed to blow from, wash off or drain off the subject property. If perimeter fencing is utilized, the operator shall insure that any objectionable materials lodged in the fence are removed daily. The operator shall police the site and surrounding areas at the end of each day's operations.
 2. The operator shall take all precautions necessary to insure that streets and roads utilized for haul routes are not adversely affected by the mining operation. All spilled dirt, gravel or other foreign material caused by mining operations shall be thoroughly cleaned from all off-site streets and roads at the conclusion of each day's operations. A more frequent cleaning of the streets may be required by the City Engineer if unsafe conditions are caused by spilled materials.
 3. A list of materials and equipment to be utilized for off-site clean up is required to be submitted with the application for permit.

4. If access from the mining operation is onto a public roadway, temporary traffic control shall be provided by the operator. Temporary signage shall conform to the latest edition of the Minnesota Manual on Uniform Traffic Control Devices for Streets and Highways as published by the Minnesota Department of Transportation. Temporary signage shall be placed prior to each day's mining operations commencing and be removed upon completion of each day's mining operations. An approved traffic control plan shall be delivered to local, County and State authorities having jurisdiction over the public roadway.
5. If the mining operation changes off-site traffic conditions along the proposed haul route, traffic control shall also be provided by the operator.
6. The maximum gross vehicle weight (fully loaded) of all trucks or tractor-trailer rigs to be utilized in conjunction with the mining operation shall be submitted in the narrative portion of the applications. The structural capacities of City roadways and bridges located along the proposed haul route shall not be exceeded.

H. **Drainage.**

1. **On-Site Drainage.** The operator shall insure that on-site drainage does not adversely affect the quality of surface or subsurface water. Sedimentation shall be controlled by means of ponds, silt fences, or straw bales. If sedimentation ponds are utilized, the perimeter of the pond shall be enclosed with safety fencing. Erosion control measures shall be utilized to prevent deterioration of the site.
2. **Off-Site Drainage.** Off-site drainage shall not be allowed to flow across the mining site. A plan for routing off-site flows around the proposed site shall be submitted with the application for permit. The plan shall utilize the United States Department of Agriculture, Soil Conservation Service (SCS) Technical Release 55, Urban Hydrology for Small Watersheds (1986) method for determining flow quantities which will originate off-site. Historic flow rates (100 year event) shall not be exceeded at the release point of re-routed flows. Upon completion of mining operations, all previously existing drainage ditches, swales and culverts shall be reopened and grade and natural drainage restored.

- I. **Sanitary Facilities.** Sanitary facilities shall be maintained at the site and kept in a sanitary condition at all times. The temporary facility shall conform to code requirements and be acceptable to sanitary authorities. Upon completion of the mining operation, the sanitary facility shall be removed and the area restored to its original condition.

- J. **Access.** One (1) access will be allowed for ingress and egress to and from the mining site. Additional access roads to the site may be constructed to allow emergency vehicles access to the site. These additional access roads shall not be utilized for the day to day affairs of the mining operation. Provisions shall be made for vehicular turn around and circulation within the site.
- K. **Groundwater Table.** Mining operations shall not occur below the level of the ground water table elevation as submitted in the soils report. (Ord. 94-4, March 28, 1994)

7-7-17: REHABILITATION STANDARDS: The following rehabilitation standards shall apply to the site of any operation permitted under this chapter.

- A. Rehabilitation shall be a continuing operation occurring as quickly as possible after the extraction operation has moved sufficiently into another portion of the extraction site or once the extraction operation is terminated. All work shall be in accordance with the approved site rehabilitation plan as submitted with the application for permit.
- B. When planning for rehabilitation and subsequent plan set preparation, the following minimum requirements shall be observed:
 - 1. If the mining site is proposed to be developed upon completion of the mining operation, the most recent edition of the City of Otsego Zoning Ordinance shall govern rehabilitation requirements. The rehabilitation plan will be reviewed in accordance with the applicable section(s) of the Zoning Ordinance.
 - 2. If the mining site is proposed to be left as vacant upon completion of mining operations, the following guidelines shall be complied with for land restoration:
 - a. Finished grades shall not exceed slopes of five (5) feet horizontal to one (1) foot vertical. Exposed slopes steeper in grade than ten (10) feet horizontal to one (1) foot vertical shall be contour plowed to minimize direct runoff of water.
 - b. Disturbed areas shall be graded in accordance with the rehabilitation plan submitted with the application for permit. If significant changes or alterations to the approved grading plan are required, a revised plan shall be submitted to the City for review.
 - c. Excavations which are to be backfilled and imported soils shall be subject to the following:

- 1) Imported materials shall be course – grained soils free from debris, roots, organic material and non-mineral matter containing no particles larger than four (4) inch size. The material shall be non-noxious, non-flammable and non-combustible.
- d. All areas shall be graded to allow for complete drainage of the site. The peaks and depressions of the area shall be reduced to a surface which will result in a gently rolling topography.
- e. The graded areas shall be cleared of all foreign debris, roots, weeds and rocks larger than four (4) inches in diameter.
- f. A minimum of four (4) inches of topsoil shall be placed over the finished grade.
- g. Turf establishment shall be in accordance with the Minnesota Department of Transportation (MnDOT) regulations. All areas that have been disturbed and subsequently regarded will require topsoil and turf establishment. Specifically, the Minnesota Department of Transportation Standard Specifications for Construction and Supplemental Specifications, Section 2575 shall govern the execution of the work related to turf establishment. Material requirements shall be as follows:
 - 1) Seed Mixture. The seed mixture shall be the Minnesota Department of Transportation Standard Specifications for Construction and Supplemental Specifications, Section 3876 mixture number 700 or 800 applied at the rate of fifty (50) pounds per acre.
 - 2) Imported Topsoil. Topsoil imported for the purpose of turf establishment shall be in accordance with the provisions of the Minnesota Department of Transportation Standard Specifications for Construction and Supplemental Specifications, Section 3877.
 - 3) Sod. Sod shall conform to the Minnesota Department of Transportation Standard Specifications for Construction and Supplemental Specifications, Section 3878.
 - 4) Commercial Fertilizer. Commercial fertilizer shall conform to the Minnesota Department of Transportation Standard Specifications for Construction and Supplemental Specifications, Section 3881 and shall be a minimum

analysis of 20-10-10 and be applied at a rate of five hundred (500) pounds per acre.

- 5) Mulch. Mulch material shall be in accordance with the provisions of the Minnesota Department of Transportation Standard Specifications for Construction and Supplemental Specifications, Section 3882 (Type I) and be applied at a rate of two (2) tons per acre. The mulch shall be disc anchored.

- h. Temporary erosion control measures shall be utilized to protect the site from wind and water damage until a self-sustaining ground cover is established. The Minnesota Department of Transportation Standard Specifications for Construction and Supplemental Specifications, Section 2573 shall govern the execution of work related to the use of temporary erosion control measures. Materials shall be as referenced under the same section. Temporary erosion control measures shall be shown on the rehabilitation plan and installed per the same plan. (Ord. 94-4, March 28, 1994)

7-7-18: PENALTIES: Any person, firm, operator, corporation or association of persons who violate any of the provisions of this Ordinance upon conviction, shall be guilty of misdemeanor as defined by State law and shall be punished in accordance with the then existing applicable penalty provisions for a misdemeanor offense, plus costs of prosecution. Each separate day of violation shall constitute a separate offense and be punishable as such. If civil action, including application for injunctive relief, is required to enforce this Ordinance, the operator, or other parties responsible for violation(s), shall be responsible for all costs, including reasonable attorney's fees, incurred by the City for such enforcement action. (Ord. 94-4, March 28, 1994)

SECTION 8
SOLID WASTE

Section:

7-8-1	Purpose
7-8-2	Definitions
7-8-3	Collection
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7-8-1: PURPOSE: It is the policy of the City of Otsego to comply with the policies and purposes of the State of Minnesota as stated in Minnesota Statute 115A.02, as amended, and further to provide a safe and healthy environment for the citizens of the City. The Solid Waste Management Ordinance governs the collection, transportation, and disposal of all waste generated within, transported through or within and disposed of within the corporate limits of the City. (Ord. 91-15, August 12, 1991)

7-8-2: DEFINITIONS: The following terms have the meaning given below for purposes of this Ordinance:

Agency: The Minnesota Pollution Control Agency.

City: The City of Otsego.

County: Wright County.

Collection: The aggregation of any waste from the place at which it is generated including all activities up to the time the waste is delivered to a waste facility. Minnesota Statutes 115A.03, Subd. 3.

Collector: Any person who performs the act of waste collection including any generator who transports waste generated by that person to any facility whether the facility is located within or outside of the City.

Construction Debris: Waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition of buildings and roads but specifically

excluding any and all hazardous waste, hazardous materials or problem materials. Minnesota Statutes 115A.03, Subd. 7.

City Council: The governing body of the City of Otsego.

Disposal or Dispose: The discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste, or any constituent thereof, may enter the environment, or be emitted into the air, or discharged into any waters including groundwater. Minnesota Statutes 115A.03, Subd. 9.

Disposal Facility, Waste: Waste facility permitted by the Agency and other applicable government authority that is designed or operated for the purpose of disposing of waste on or in the land, together with any appurtenant facilities needed to process waste for disposal or transfer to another waste facility. Minnesota Statutes 115A.03, Subd. 10.

Floodplain: The areas adjoining a watercourse which has been or hereafter may be covered by the 100 year flood as determined by the use of the 100 year flood profile and other technical data in the Flood Insurance Study.

Garbage: Discarded material resulting from the handling, processing, storage, preparation, serving and consumption of food. Minnesota Rules 7035.03, Subp. 40.

Generate or Generation: The act or process of producing waste. Minnesota Statutes 115A.03, Subd. 11.

Generator: Any person who generates waste. Minnesota Statutes 115A.03, Subd. 12.

Hazardous Waste: Any refuse, sludge, or other waste material or combinations of refuse, sludge, or other waste materials in solid, semi-solid, liquor or contained gaseous form which because of its quantity, concentration, physical or infectious characteristics may: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to, explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended. Minnesota Statutes 116.06, Subd. 13.

Landspreading: The placement of waste or waste byproducts on, or incorporation of them into, the soil surface. Minnesota Rules 7035.03, Subp. 54.

Leachate: Liquid that has percolated through solid waste and has extracted, dissolved, or suspended materials from it. Minnesota Rules 7035.03, Subp. 56.

Major Appliance: Clothes washers and dryers, dishwashers, hot water heaters, garbage disposals, trash compactors, conventional ovens, ranges and stoves, air conditioners, refrigerators, and freezers. Minnesota Statutes 115A.03, Subd. 17a.

Mixed Municipal Solid Waste: Garbage, refuse, and other solid waste from residential, commercial, industrial and community activities which is generated and collected in aggregate, but does not include auto hulks, ash, construction debris, mining waste, sludge, tree and agricultural wastes, tires, lead acid batteries, used oil, and other material collected, processed and disposed of as separate waste streams. Street sweepings are excluded from the definition of mixed municipal solid waste only if they are properly screened, meet applicable MPCA standards for heavy metal content, and are free of any pollutants or material determined to be solid waste or hazardous waste pursuant to this Ordinance, or any other material determined by the City Engineer to be a public health or safety hazard. Minnesota Statutes 115A.03, Subd. 21. (Ord. 95-3, Feb. 13, 1995)

Operator: The person or persons responsible for the operation of the facility. Minnesota Rules, Subp. 73.

Owner: An individual, association, syndicate, partnership, corporation, trust or any other legal entity holding an equitable or legal ownership interest in land, buildings, structures, dwelling unit(s), or other property.

Person: Any individual or entity.

Processing: The treatment of waste after collection and before disposal. Processing includes, but is not limited to reduction, storage, separation, exchange, resource recovery; physical, chemical or biological modification including composting, and transfer from one waste facility to another. Minnesota Statutes 115A.03, Subd. 25.

Recyclable Material: Any materials that are separated from mixed municipal solid waste for the purpose of recycling except that refuse derived from fuel or other material destroyed by incineration is not a recyclable material. Minnesota Statutes 115A.03, Subd. 25a.

Recycling: The process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use. Minnesota Statutes 115A.03, Subd. 25.

Refuse: Putrescible and non-putrescible solid wastes, including garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, and market and industrial solid wastes, and including municipal treatment wastes which do not contain free moisture. Minnesota Rules 7035.03, Subp. 89.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur. Minnesota Statutes 115B.03, Subd. 15.

Rubbish: Non-putrescible solid wastes, including ashes, consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind. Minnesota Rules 7035.03, Subp. 94.

Runoff: Any liquid that drains over land from any part of a facility. Minnesota Rules 7035.03, Subp. 95.

Sewage Sludge: The solids and associated liquids in municipal waste water which are encountered and concentrated by a municipal waste water treatment plant. Sewage sludge does not include incinerator residues and grit, scum, or screenings removed from other solids during treatment. Minnesota Statutes 115A.03, Subd. 29.

Sludge: Any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial waste water treatment plant, water supply treatment plant or air contaminant treatment facility, or any other waste having similar characteristics and effects. Minnesota Statutes 116.06, Subd. 9i.

Solid Waste: Garbage, refuse, sludge from a water treatment plant or air contaminant treatment facility, and other discarded waste materials and sludge in solid, semi-solid, liquid, or contained gaseous form, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock, sewage sludge, solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under the Federal Water Pollution Control Act, as amended, or applicable State law, dissolved materials in irrigation return flows or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended. Minnesota Statutes 116.06, Subd. 10.

Source Separation: The segregation by the generator of recyclable and reusable materials and yard waste from mixed municipal solid waste for collection in a separate waste stream resulting in reuse, recycling, resource recovery or other processing resulting in a usable end product.

Waste: Solid waste, sewage sludge and hazardous waste. Minnesota Statutes 115A.03, Subd. 34.

Wetland: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that in normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands have the following general diagnostic environmental conditions:

- A. **Vegetation.** The prevalent vegetation consists of macrophytes that are typically adapted to areas having hydrologic and soil conditions described above. Hydrophytic species, due to morphological, physiological and/or reproductive adaptation(s), have the ability to grow, effectively compete, reproduce and/or persist in anaerobic soil conditions. The period of inundation or soil saturation varies according to the hydrologic/soil moisture conditions.
- B. **Soil.** Soils are present and have been classified as hydric, or they possess characteristics that are associated with reducing soil conditions.
- C. **Hydrology.** The area is inundated either permanently or periodically at mean water depths less than or equal to two (2) meters (6.6 feet), or the soil is saturated to the surface at some time during the growing season of the prevalent vegetation. The period of inundation or soil saturation varies according to the hydrologic/soil moisture regime. Indicators of vegetation associated with wetlands, of development under reducing conditions, and of hydrologic conditions that occur in wetlands are listed in the "Corps of Engineers Wetlands Delineation Manual", (U.S.-ACOE, Environmental Laboratory, 1987. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, Miss.). As defined here, wetlands also include any watercourse, natural drainage system, water body, storm water detention basin or wetland that may be subject to periodic flooding, overflow, and/or seasonal high water table.

Yard Waste: Garden wastes, leaves, lawn cuttings, weeds and prunings generated at residential or commercial properties. Minnesota Rules 7035.03, Subp. 121.

Yard Waste Composting Facility: A facility that accepts yard waste originating on other property and processes that waste to produce a useable end product. (Ord. 91-15, August 12, 1991)

7-8-3: COLLECTION:

- A. **Scope.** The following sections apply to all solid waste generated and collected within the City including, but not limited to, mixed municipal solid waste, yard waste, industrial waste, commercial waste, construction debris, hazardous waste, household hazardous waste, recyclable materials, other solid waste and waste.
- B. **Responsibility for Collection:** The owner and the occupant of any premises, business establishment, or industry and the collector or collection service shall be responsible for the satisfactory and prompt collection of all waste accumulated at a premises, business establishment or industry and its transportation to an

appropriate waste disposal facility for which a permit has been issued by the Agency and the local government with the jurisdiction and responsibility to do so.

C. Generators.

1. Waste Storage. The owner and the occupant of any premises, business establishment, or industry shall be responsible for storing the generated waste in a satisfactory manner that prevents threats to community health, safety and welfare. Storage of waste by any collector is prohibited within the limits of the City.
 - a. Garbage Containers. Garbage and any putrescible material shall be placed in a durable, rust resistant, non-absorbent, water tight, rodent proof cleanable container with a close fitting, fly-tight cover.
 - b. Refuse Containers. Refuse must be stored in a durable container that is waterproof. Where refuse and any garbage or putrescible material are stored together, the container must meet the requirements of part 3.3.1.1.
 - c. Container Size and Type. Contractual relationships between individual generators and collectors may determine the allowable size of the container and the construction material as long as the chosen container meet the above standards and serves to protect the health, safety and welfare of the community.
 - d. Container Maintenance. All storage containers shall be maintained to prevent creation of a nuisance or any menace to public health.
 - e. Exceptions. Any objects or materials too large or otherwise unsuitable for storage containers shall be stored in a pollution and nuisance free manner that meets the intentions of the above sections and is in compliance with applicable Federal, State, County, and City statutes, regulations, rules, ordinances and resolutions.

D. Collectors.

1. Collector Contracts. The collection of mixed municipal solid waste shall utilize free contracting between individual generators and collectors except as regulated by this Ordinance.
2. License.
 - a. Required. Collectors of any solid waste, including source separate recyclable materials and yard waste, that operate in the City shall

obtain a City collectors license and no collector shall operate within the City without such a license. The City collectors license is revocable upon violation of any part of this Ordinance or any conditions attached by the City to the license. Issuance of the license does not constitute endorsement of the collector nor does it indicate any intention on the City's part to be bound or held liable for any actions taken by the collector or the results of those actions.

- b. Validity. The City collectors license shall be valid for one (1) year from the date of issuance unless revoked earlier and shall be renewable upon application and payment of a renewal fee prescribed by resolution of the City Council.
- c. Application. Applicants for City collector's licenses shall make application to the City on forms provided by the City and through procedures prescribed by the City Council.
- d. Issuance. City collector's licenses shall be granted to any collector of solid waste upon presentation to the City Clerk of evidence that a current State of Minnesota and Wright County license, evidence of adequate levels of insurance coverage and posting of a bond in the name of the City of Otsego. An applicant denied a license may have the decision reviewed by the City Council. The applicant shall request such review in writing within ten (10) days after denial of the license.
- e. Fee. The annual City collectors license fee shall be set by the City Council by resolution.
- f. License Bond. The amount of the required bond shall be set annually by resolution of the City Council. The bond posted as a license requirement is intended to provide indemnification to the City in the event of a release of any waste that is related to the bonded collector's activities. The posting of this bond does not relieve the collector of any liability for the release of waste. In the event that the City is caused to respond, the bond will be forfeited to the extent of the City's response costs. If the response costs exceed the bond amount, the collector shall remain liable to the City for costs in excess of the bond amount.
- g. Insurance. City collector's license applicants shall furnish the City with certificates of insurance containing a thirty (30) day cancellation notice issued by insurers duly licensed by the State of Minnesota. Insurance must include the following:

- 1) Commercial or business vehicle liability insurance, including non-owned and hired vehicles, with combined single liability limits not less than five hundred thousand dollars (\$500,000.00) per occurrence.
 - 2) Workers compensation insurance in accordance with Minnesota Statute 176.182, and including employers liability coverage with limits not less than one hundred thousand dollars (\$100,000.00).
- h. Revocation. The City Council may suspend or revoke the City collector's license of any collector whose conduct is found to be in violation of this Ordinance. Suspension or revocation may also be based on other health, safety and welfare concerns arising out of the performance of any licensed collector. Revocation or suspension shall be preceded by a public hearing conducted in accordance with Minnesota Statutes Chapter 14.57 to 14.70. The City Council may appoint a hearing examiner or may conduct the hearing itself. The hearing notice shall be given at least ten (10) days prior to the hearing, shall include notice of the time and place of the hearing, and shall state the nature of the charges against the collector. Notice shall be provided to the collector by mail.
3. License Exemptions. The license requirements of this Ordinance shall not apply to persons who haul garbage, refuse, or recyclables from their own residence or business property. Provided the following conditions are met:
 - a. Garbage and refuse are hauled in containers meeting the standards established in this Ordinance.
 - b. Garbage and refuse is disposed of only at designated sanitary landfills or other facilities authorized by the County.
 - c. Recyclables are disposed of only at a recycling facility, an organized recycling drive, or through licensed collectors.
 - d. Yard waste is privately composted, or is disposed of at a composting facility authorized by the government agency or political subdivision with jurisdiction to do so.
4. No Vested Right. No collector holding a City collector's license pursuant to this Ordinance shall acquire a vested right of any kind in that license. The City may, upon finding that public necessity requires, determine to establish other means of refuse collection.

5. Charge for Service. Licensed collectors of mixed municipal solid waste shall not charge their customers a flat fee. To the extent possible, charges shall reflect the volume or weight of mixed municipal solid waste collected.
6. Duty to Provide Service. A licensed collector of mixed municipal solid waste shall pick up all such waste which has been deposited for collector pursuant to this Ordinance and the contract between the collector and the generator.
7. Liability. Any non-licensed collector operating within the City shall be liable for any damage or threat to community health, safety and welfare and subject to this Ordinance just as if that collector had obtained a City collectors license.
8. Containers and Vehicles. Collectors of waste shall utilize vehicles and contains that are covered, leak proof, durable, of easily cleanable construction and suitable for the type of waste being collector. The vehicles and containers shall be cleaned to prevent nuisances, pollution, vermin and insect breeding and shall be maintained in good repair and serviceable condition at all times.
9. Releases of Waste. If any material is released from a collector's vehicle or container, the collector shall pick up the material immediately and properly clean the area. If the material is hazardous in nature or a hazardous waste, the collector must immediately notify the City and comply with all other applicable statutes, rules, and regulations. (Ord. 91-15, August 12, 1991)
10. Schedule. Regularly scheduled collection of mixed municipal solid waste, recyclable material and yard waste shall be in accordance with the following provisions:
 - a. Collection shall only occur between the hours of 6:00 AM and 10:00 PM on the scheduled day of service.
 - b. Collection from any residential premises, except those located within commercial zoning districts, shall occur only on Thursday of each week.
 - c. Collection from any commercial, industrial or institutional use shall occur on an as needed basis agreed to between the generator and collector.
 - d. Holidays:
 - (1) No collection shall occur on the following holidays:

- (a) New Years Day.
- (b) Memorial Day.
- (c) Independence Day.
- (d) Labor Day.
- (e) Thanksgiving Day.
- (f) Christmas Day.

(2) For any week during which a holiday established by this Section occurs between Monday and Friday, the collection service shall be allowed on the next calendar day after that collection date established by this Section.

- e. This Section shall not apply to collection of solid waste from a single property related to a construction or landscaping project or other activity occurring on a temporary basis as may be allowed by the City Code. (Ordinance 2012-11 adopted September 24, 2012)

E. **Acceptable Waste.** Mixed municipal solid waste, source separated recyclable material, and yard waste are the only materials authorized for regular collection by persons holding City collector's licenses. All other waste types require special arrangement with a collector licensed and authorized by the State of Minnesota and the County to transport that type of waste. Notice shall be provided to the City of the collection of other waste types waste before it is collected.

- 1. Waste Oil. Disposal of waste oil in any form as part of the mixed municipal solid waste stream is prohibited.
- 2. Lead Acid Batteries. Disposal of lead acid batteries, or any part of those batteries containing traces of lead or acid, as part of the mixed municipal solid waste stream is prohibited.
- 3. Tires. Disposal of tires, used or new, as part of the mixed municipal solid waste stream is prohibited.

F. **Ownership of Waste.** Ownership of the waste shall transfer from the generator to the collector upon collection. At no time shall ownership of any waste reside in the City. If the City comes into possession of any waste as a result of a response to a release, ownership continues to vest in the person owning the waste at the time of the release. (Ord. 91-15, August 12, 1991)

7-8-4: HAZARDOUS WASTE:

- A. **Generation.** Any person generating hazardous waste within the City shall hold a license issued by the Agency. If the County undertakes the issuance of licenses for the generation of hazardous waste, all generators located within the City shall be so duly licensed.
- B. **Collection.** Hazardous waste shall be collected only by handlers of hazardous materials duly licensed by the State of Minnesota and the County. In the event that any hazardous waste is released in the City, the collector or transporter shall immediately notify City authorities and shall immediately begin removal and remedial actions designed to protect the environment and the health, safety and welfare of the residents of the City.
- C. **Disposal.** Disposal of hazardous waste within the City is prohibited. Any collector or transporter operating within the City shall dispose of hazardous waste only in accordance with applicable Federal law, Minnesota Statutes, and the rules promulgated by the Agency. (Ord. 91-15, August 12, 1991)

7-8-5: YARD WASTE:

- A. **Source Separation.** All persons who are owners, lessees, or occupants of any building, commercial or residential, within the City that generates yard waste shall separate that yard waste from all solid waste. Commingling of yard waste and mixed municipal solid waste is prohibited.
- B. **License Required.** Collectors of yard waste shall hold a valid City collectors license.
- C. **Collection.** The collection, removal, and disposal of yard waste shall be by contract with a collector duly licensed to perform such collection by the Agency and the County and holding a City collectors license. Yard waste shall be collected as part of any regular system of collection of mixed municipal solid waste operated within the City. Such collection shall be in accordance with Section 7-8-3, and the following subsections.
 - 1. **Responsibility.** The owner and the occupant of any premises, business establishment, or industry and the collector or collection service shall be responsible for the satisfactory and prompt collection of all yard waste accumulated at a premises, business establishment or industry and its transportation to an appropriate waste disposal facility for which a permit has been issued by the Agency and the local government with the jurisdiction and responsibility to do so.

2. **Suitable Material.** Yard waste is the only material suitable for collection in this separate waste stream. Inclusion of any feces, animal or human, in the yard waste placed for collection shall be considered a nuisance and is prohibited.
 3. **Placement.** Yard waste shall be placed separately from other solid waste by the owner or resident of the property from which the waste is derived.
 4. **Collection Sites.** Yard waste collection sites shall be located at the property or residence generating the waste or at a suitable nearby location that is accessible to the owner or resident and the collector.
 5. **Containers.** Yard waste shall be separately contained in bags that prevent the release of any such yard waste, are odor proof and which are capable of being lifted and transported without breakage.
 6. **Accumulation.** Yard waste shall not be allowed to accumulate in excessive amounts that represent a hazard to public health. Accumulation of excessive amounts of yard waste at any property or collection location shall be considered a public nuisance.
- D. **Disposal.** Yard waste generated in the City shall not be disposed of in any landfill. The preferred method for yard waste disposal is composting that produces a usable end product or incorporation into the soil as an agricultural amendment.
- E. **Self-Composting Encouraged.** Self-composting of yard waste in a backyard composting facility or by leaving lawn clippings in place is encouraged as an efficient, safe and cost effective method of disposal for this waste. (Ord. 91-15, August 12, 1991)

7-8-6: RECYCLING:

- A. **License Required.** Collectors of recyclable materials shall hold a valid City collectors license.
- B. **Opportunity to Recycle.** Each licensed collector shall provide its customers with an opportunity to recycle through weekly curb side collection of the recyclables targeted below. The targeted recyclables shall be collected from a site at or near the customers mixed municipal solid waste collection site. The City collectors license may specify how and where a customer is to place recyclables for collection.
- C. **Ownership of Recyclables.** The holder of the City collection license is deemed the owner of the recyclables upon collection and may market them.

D. **Quarterly Report on Recyclables.** Each licensed collector of recyclable materials shall submit a quarterly report to the City to include the weight in tons of mixed recyclables collected by that licensee within the City. The report shall be due on or before the twentieth (20th) day of the month following the close of the quarter on a form prescribed by the City. The report shall also identify the estimated weight of each type of recyclable collected, distinguish domestic collection tonnage from commercial/business tonnage, and describe how the weights were calculated.

E. **Source Separation.**

1. Pre-Collection. All persons who are owners, lessees, and occupants of any building, commercial or residential, within the City that generated mixed municipal solid waste shall separate from all solid waste the following designated recyclable materials before disposal, removal or collection:
 - a. Paper Recyclables. Paper recyclables shall be bundled separately and/or secured in such a manner as to prevent them from being blow or scattered, and shall be maintained in a dry condition free of any other substance and shall not be placed in plastic bags.
 - b. Aluminum Recyclables. Aluminum recyclables shall be clean of all contents and shall not be placed in plastic bags.
 - c. Glass Recyclables. Glass recyclables shall be clean of all contents with caps, lids and all metal removed prior to collection and shall not be placed in plastic bags.
 - d. Non-Aluminum Can Recyclables. Non-aluminum can recyclables shall be clean of all contents and shall not be placed in plastic bags.
 - e. Plastic Recyclables. Plastic recyclables shall be designated by resolution of the City Council and shall be clean of all contents with caps, lids and all metal removed prior to collection.
 - f. Other. Any other material designated as a source separated recyclable material by resolution of the City Council. These materials shall be packaged for collection as directed in the City Council's resolution.
2. Containers. All source separated recyclables materials shall be placed into containers and not mixed with other forms of solid waste or mixed municipal solid waste. Containers shall be maintained in a clean and sanitary condition in accordance with all pertinent health statutes,

ordinances, rules and regulations. The style, type and construction material for the containers may be designated by the collector as long as the designated container is in accordance with this Ordinance and is adequate and substantial enough to contain the recyclables therein. Further specifications for containers may be adopted by the City Council by resolution.

F. **Collection.** The collection, removal and disposal of recyclable material shall be by contract with a collector duly licensed to perform such collection by the Agency and the Count and holding a City collectors license. It shall be unlawful for any person other than a contacted collector, a City employee acting with authority, or any other authorized person to distribute, collect, remove, disturb, or dispose of recyclable materials after said material have been placed or deposited for collection.

G. **Disposition of Recyclable Materials.**

1. **Disposal of Recyclable Materials.** Any source separated recyclable materials shall be delivered for reuse in their original form or for use in a manufacturing process that does not cause the destruction of recyclable materials in a manner that precludes further use.

2. **Other Disposal of Recyclable Material.** Disposal of source separated recyclable material in any manner other than stated in Section 7-8-7 shall operate to void the exemption from mixed municipal solid waste as to that material and brings that material within the full scope of this Ordinance.

3. **Liability for Cost of Proper Disposal.** The collector of the material in question shall be liable for all costs and charges relating to the proper disposal of the material after the exemption is void and the collector's City collection license may be revoked for any such improper disposal.

H. **Right to Individual Disposal of Recyclable Materials.** Nothing in this Ordinance shall abridge the right of any person to give or sell their recyclable materials to any recycling program lawfully operated for profit, non-profit, charitable purposes. (Ord. 91-15, August 12, 1991)

7-8-7: WASTE DISPOSAL FACILITIES: The following sections control the location, use and operation of waste disposal facilities located within the corporate limits of the City. These sections are intended to complement, conform to, and operate in conjunction with the City Zoning Ordinance and the City's Comprehensive Plan.

A. **Floodplain and Wetland Prohibition.** No waste disposal facility of any type or kind shall be located in, on, or within three hundred (300) feet of a floodplain or a wetland. This prohibition is not waivable in reference to any facility and overrides any and all waivers or conditional uses allowed.

B. **Waste Disposal Facilities.**

1. **Prohibition.** Location of any waste disposal facility, including, but not limited to, a landspreading facility for other than yard waste, a construction debris disposal facility, a mixed municipal solid waste disposal facility, an industrial waste disposal facility, a hazardous waste disposal facility, an infectious waste disposal facility or any waste incineration facility within the corporate limits of the City is prohibited except as allowed in the immediately following section. This prohibition is based on the City Council's finding that the soil types and subsurface material within the City and the City's proximity to a major surface water course generally preclude the location of these types of facilities within the City.
2. **Backyard Yard Waste Composting Facilities.** Backyard yard waste composting facilities are exempt from this Ordinance to the extent that they do not have any deleterious effect on the public health, environment, surface water or ground water. This exemption shall be void if it is found that a deleterious effect has resulted or is resulting from the disposal and upon such a finding such waste shall come within all of the terms of this Ordinance. Proof of the lack of deleterious effect is the burden of the generator.
3. **Individual Waste Disposal Facilities.** Where regular collection services are not available, mixed municipal solid waste resulting from a single family's property is exempt from this Ordinance to the extent that it does not have any deleterious effect on the public health, environment, surface water or ground water. This exemption shall be void if it is found that a deleterious effect has resulted or is resulting from the disposal and upon such a finding such waste shall come within all of the terms of this Ordinance. Proof of the lack of deleterious effect is the burden of the generator.
4. **Waiver.** It is within the discretion of the City Council to waive the prohibition on waste disposal facilities on a site specific basis. This discretionary waiver of the prohibition shall be preceded by submission of facts and plans by the proposed operator and owner of the facility, a public hearing and issuance of a decision by the City Council. If allowed by the City Council, the facility must, at a minimum, conform to the rules promulgated by the Agency for the type of waste facility allowed.

- a. Facts and Plans. Facts and plans shall contain the following materials, at a minimum, and any other materials requested by the City Council:
- 1) Name of the site owner.
 - 2) Name of the site operator.
 - 3) Address of a contact person for the facility operation.
 - 4) A telephone number for the contact person.
 - 5) Location of the site.
 - 6) An environmental impact statement or environmental assessment worksheet, as applicable, including but not limited to, an assessment of the potential impact on surface and groundwater, the potential for litter, the potential for particulate air pollution, the potential for runoff, the potential for leachate formation and the potential for excessive or offensive odors.
 - 7) A description of any processing of the waste.
 - 8) The plan for acceptance and disposal of the waste.
 - 9) The end product of the process and its planned disposition if the waste is processed.
 - 10) A description of steps to be taken to abate, ameliorate or negate the potential environmental hazards.
 - 11) Any preliminary information or indications from the Agency or any other governmental or private organization relative to the potential hazards or problems with the site.
- b. Notice. Notice of the public hearing shall be given thirty (30) days prior to the hearing. Notice shall be published in a newspaper of general circulation in the City and mailed notice shall be provided to landowners adjacent to the proposed site. The notice shall indicate the type of facility proposed, its location, the time and date of the public hearing and shall state the fact that the plans and facts relevant to the proposal are available for public review in the City offices. The facts and plans submitted by the operator shall be made available to the public during the notice period, during normal business hours, at the City offices.

- c. Public Hearing(s). Public hearing(s) shall be held by the City Council and all interested parties who request time to present information shall be given such time. Time to present information shall be allotted at the discretion of the City Council but shall be reasonable and equitable in amount. Written comments and objections may be submitted for the City Council's information and review. Records of the hearing shall be kept and such records shall consist of copies of all written materials and transcripts or recordings of the hearing(s).
 - d. City Council Decision. The City Council shall render a decision within sixty (60) days of the final public hearing. A decision to allow the facility constitutes a conditional use permit and the City Council may attach such conditions as it feels are appropriate to protect the public health, safety and welfare and the environment. A negative decision must be accompanied by the reason for the decision. Any decision is appealable as allowed by law.
5. Sludge Disposal Sites, City of Otsego Only. Sites designated by the City Council for disposal of sludge generated by municipal waste water treatment plants owned and operated by the City of Otsego shall be exempt from the prohibition established by Section 7-8-7.B.1 of this Code. (Ord. No. 2005-15, 27 June 2005)

C. Yard Waste Composting Facilities.

- 1. License.
 - a. Required. Operation of a yard waste composting facility requires licenses provided by the Agency, the County, and a City yard waste composting facility license.
 - b. Issuance. The City yard waste composting facility license shall be issued or denied by the City Council after a public hearing to consider application materials submitted by the proposed facility owner and the operator and to solicit public comment. The public hearing shall be preceded by thirty (30) days notice in a newspaper or general circulation. Mailed notice shall be provided to owners of land adjacent to the proposed site. During the notice period, the application materials shall be available for public review at the City offices and this shall be stated in the public notice. The application will be approved or denied within sixty (60) days of the public hearing. In the event the license is denied, the City Council shall provide the reason for the denial.

- c. Term. City yard waste composting facility licenses shall be valid for one (1) year with renewal conditional on City Council approval. Matters to be considered on renewal include, but are not limited to, conformance with all license requirements and any other statutes, ordinances, rules and regulations promulgated by any governing body with legal authority to regulate the facility. Renewal shall be by resolution of the City Council. The renewal fee shall be set by resolution of the City Council. Public notice of the renewal shall be provided in a newspaper of general circulation in the City.

- d. Application. The City yard waste composting facility license application shall contain, at a minimum, the following materials, and any other materials requested by the City Council:
 - 1) Name of the site owner.
 - 2) Name of the site operator.
 - 3) Address of a contact person for the operator.
 - 4) A telephone number for the contact person.
 - 5) Location of the site.
 - 6) An assessment of the possible environmental hazards including, but not limited to, the potential impact on surface and ground water, the potential for litter, the potential for particulate air pollution, and the potential for excessive or offensive odors.
 - 7) A description of the process.
 - 8) The end product of the process and its projected disposition.
 - 9) A description of steps to be taken to abate, ameliorate or negate the potential environmental hazards.

- e. Insurance. City yard waste composting facility license applicants shall furnish the City with certificates of insurance containing a thirty (30) day cancellation notice issued by insurers duly licensed by the State of Minnesota. Insurance must include commercial general liability insurance covering all operations of the facility with limits not less than two hundred fifty thousand dollars (\$250,000.00) per person and five hundred thousand dollars (\$500,000.00) per occurrence for bodily and personal injury. If the liability policy includes an aggregate limit, the collector shall insure that the

unencumbered aggregate remains not less than five hundred thousand dollars (\$500,000.00).

- f. License Bond. The operator of any yard waste facility located within the City shall post a bond payable to the City of Otsego prior to issuance of the City license. The amount of the required bond shall be set by resolution of the City Council. The bond posted as a license requirement is intended to provide indemnification to the City in the event of any violation of this Ordinance or of conditions stipulated in the City license. The posting of this bond does not relieve the facility of any liability for any violations of this Ordinance or any stipulated conditions in the license. In the event that the City is caused to respond, the bond will be forfeited to the extent of the City's response costs. If the response costs exceed the bond amount the facility shall remain liable to the City for costs in excess of the bond amount.
- g. Fee. The fee for the issuance of the license and conditional use permit shall be set by resolution of the City Council.

2. Facility Requirements.

- a. Acceptable Materials. The only material acceptable at a yard waste composting facility is yard waste. Any other waste shall be considered unacceptable and acceptance of unacceptable waste at the facility constitutes grounds for revocation of the City license.
- b. Environmental Damage Limits. The facility shall incorporate methodology designed to:
 - 1) Limit or eliminate surface runoff.
 - 2) Limit or eliminate obnoxious or offensive odors and remain within the limits of the rules promulgated by the Agency concerning odors.
 - 3) Limit or eliminate any dispersal of material off of the site.
 - 4) Measure any leachate production and limit its entry into the ground water.
 - 5) Meet any other requirements imposed as a condition of granting the license.

3. Performance Standards.

- a. The facility must meet MPCA requirements for a yard waste compost facility as specified in Minnesota Rules 7035.2835.
- b. The facility must not abut a property planned, used, or zoned for residential or public use.
- c. The facility must be screened from the public right-of-way by operating in an enclosed building or, if outdoors:
 - 1) Within an area enclosed by an opaque fence at least six (6) feet in height with landscaping; and
 - 2) At least one hundred fifty (150) feet from property planned, used, or zoned for residential or public use.
- d. Other setback and landscape requirements shall be the same as those for the zoning district in which the facility will be located, except that all non-impervious surfaces other than planting beds shall be sodded and irrigated.
- e. The site shall be maintained free of litter and any other undesirable materials, and will be cleaned of loose debris on a daily basis; covered containers shall be provided for bags, boxes, and other litter left by patrons.
- f. Space shall be provided on site for a minimum of five (5) customers, or the anticipated peak customer load, whichever is higher, to circulate, park and deposit yard waste materials, except where the Zoning Administrator determines that allowing overflow traffic above five (5) vehicles is compatible with surrounding businesses and public safety.
- g. One (1) off-street parking space shall be provided for each commercial vehicle operated by the yard waste compost facility. Parking requirements will otherwise be as mandated by the zoning district in which the facility is located except that parking spaces for employees may be reduced when it can be shown that parking spaces are not necessary if employees are transported in a company vehicle to the site.
- h. All inbound and outbound trucks and equipment, except for personal vehicles, shall be restricted to designated routes established by the City.

- i. Noise levels shall not exceed sixty (60) decibels as measured at the property line of property zoned for residential or public use. Otherwise, noise levels shall not exceed seventy (70) decibels.
- j. If the facility is located within five hundred (500) feet of property planned, zoned or used for residential use, it shall only be in operation between nine o'clock (9:00) AM and seven o'clock (7:00) PM.
- k. A pest control plan shall be submitted that is acceptable to the local sanitarian or other appropriate official including, but not limited to, a contract with a licensed pest control operator or regular service.
- l. Sign requirements shall be those provided for in the Zoning Ordinance in which the facility is located or as provided by Minnesota Statutes, Chapter 173.086. The facility shall be clearly marked with the name and telephone number of the facility operator and the hours of operation.
- m. Power driven processing necessary for efficient temporary storage and shipment of material may be approved if the facility meets noise and other considerations listed above.
- n. The operation of the facility shall comply with a regular inspection scheduled as approved by the sanitarian or other appropriate local official.
- o. If required, an environmental impact statement or environmental assessment worksheet must be completed prior to granting approval for any yard waste compost facility.

4. Waste Acceptance.

- a. Inspection and Acceptance. Each load arriving at the facility shall be inspected and acceptance shall be noted on a permanent record. This record shall include the date, transporter name, point or origin and type of waste. This form shall be maintained at all times and shall be available for inspection. Completed acceptance forms shall be held for inspection for four (4) years.
- b. Unacceptable Waste. In the event that unacceptable waste is delivered to the facility and discovered before acceptance, it shall be the collector's or transporter's responsibility to remove the unacceptable waste within twenty-four (24) hours of receiving notice of its unacceptable status. It shall be considered sufficient notice to inform the driver of the transporting vehicle that the waste is

unacceptable provided that the reason for the unacceptable status is provided to that driver in written form. A copy of this written notice shall be maintained in the waste acceptance records and shall be available for inspection.

- c. Ownership of the Waste. Ownership of the waste shall remain in the collector or transporter until the waste is inspected and accepted at the facility at which time ownership shall vest in the facility owner and operator.

5. Facility Operation.

- a. Process. The process employed shall be designed to reduce or alter the waste to provide an acceptable end use product.
- b. Receipt of Waste. Yard waste shall be received at the composting site in containerless bulk form and not in plastic or other bags or boxes. Vehicles delivering yard waste must be enclosed. Yard waste may not be delivered, transferred or stored within three hundred (300) feet of any residential building.
- c. Processing Time. All yard waste accepted must begin processing within twenty (20) days of acceptance at the facility.
- d. Storage. Adequate storage for one (1) week's backlog of accepted waste shall be provided. This storage site must provide adequate measures to:
 - 1) Prevent the formation of leachate.
 - 2) Prevent the dispersal of the waste off of the facility.
- e. Vehicles. All vehicles delivering yard waste must be in compliance with the weight limits of the roads utilized.
- f. Extraneous Materials. All extraneous materials must be removed within twenty-four (24) hours.
- g. Nuisance. The composting operation, including delivery, storage, spreading, and composting shall not generate off-site nuisances. Such off-site nuisances include, but are not limited to, dust, odor and wind blown debris or yard waste. The operation shall be free of litter and vermin.

- h. Other Regulations. The composting shall be accomplished in accordance with the regulations and rules of all other agencies, organizations, or entities having jurisdiction over such activity.
- i. Termination. Composting activities shall be suspended if at any time it is determined that conditions exist constituting a fire hazard, or if there is a threat to surface or ground water fro runoff or leachate. The City may inspect the site at any time without prior notice to ensure compliance with this Ordinance.
- j. Reports. The operator of the composting facility shall report annually to the City. The report shall state the tonnage of yard waste delivered, the tonnage composted, the origin of the yard waste and shall distinguish any yard waste that originates within the City from that originating at other locations. One (1) copy of the annual report required to be submitted to the Agency by the operator or owner shall be submitted to the City Council no later than thirty (30) days after the report is due to be submitted to the Agency. Failure to submit this report constitutes grounds for revocation of the City yard waste composting facility license.

D. Landspreading of Yard Waste.

- 1. License Required. Any person landspreading yard waste shall obtain a City yard waste composting license before beginning the process.
- 2. Location. Landspreading of yard waste shall be permitted only in those zones where a yard waste composting facility is allowable.
- 3. Receipt of Waste. Yard waste shall be received at the application site in containerless bulk form and not in plastic or other bags or boxes. Vehicles delivering yard waste must be enclosed.
- 4. Ownership of the Waste. Ownership of the waste shall remain in the collector or transporter until the waste is inspected and accepted at the facility at which time ownership shall vest in the facility owner and operator.
- 5. Handling. Yard waste may not be delivered, transferred or stored within three hundred (300) feet of any dwelling except the dwelling of the landowner. Yard waste may not be stored within three hundred (300) feet, nor spread within one hundred (100) feet, of any wetland or floodplain.
- 6. Application. Yard waste may be applied within any twelve (12) month period at a rate not to exceed three (3) inches in depth or such lesser amount as may be necessary to allow complete incorporation.

7. Processing. Yard waste must be spread within three (3) days of receipt and incorporated within fifteen (15) days of receipt. Yard waste received after a one (1) inch deep ground freeze must be incorporated by the following May 15.
 8. Vehicles. All vehicles delivering yard waste must be in compliance with the weight limits of the roads utilized.
 9. Extraneous Materials. All extraneous materials must be removed within twenty-four (24) hours.
 10. Nuisance. The landspreading operation, including delivery, storage, spreading and incorporation, shall not generate off-site nuisances of a greater amount or different type than is typically associated with farming. Such off-site nuisances include, but are not limited to, dust, odor and wind blown debris or yard waste. The operation shall be free of litter and vermin.
 11. Other Regulations. The landspreading shall be accomplished in accordance with the regulations and rules of all other agencies, organizations or entities having jurisdiction over such activity.
 12. Termination. Landspreading activities shall be suspended if at any time it is determined that conditions exist constituting a fire hazard, or if there is a threat to surface or ground water from runoff or leachate. The City may inspect the site at any time without prior notice to ensure compliance with this Ordinance.
 13. Rented Land. On rented or leased land, no landspreading shall take place without the permission of the landowners.
 14. Reports. The operator of the landspreading facility shall report annually to the City. The report shall state the tonnage of yard waste delivered, the tonnage incorporated, the origin of the yard waste and shall distinguish any yard waste that originates within the City from that originating at other locations. Failure to submit this report constitutes grounds for revocation of the City yard waste composting facility license.
- E. **Agricultural Waste.** No part of this Ordinance is intended to limit the incorporation into soil of agricultural waste originating on the property on which it is incorporated. That agricultural practice shall not be considered waste or yard waste composting and shall be allowable without any license or permit from the City. (Ord. 91-15, August 12, 1991)

7-8-8: VIOLATIONS AND PENALTIES:

- A. **Criminal Penalties.** Any person who fails to comply with any provision of this Ordinance shall be deemed to have committed a penal violation. A separate offense shall be deemed committed upon each day during on or which a violation occurs or continues. The penalty for such violation shall be a misdemeanor per Minnesota Statute 412.231 or as later amended, plus the costs of prosecution.
- B. **Injunctive Relief.** In the event of a violation or a threatened violation of this Ordinance, the City may institute appropriate actions or proceedings, including requesting injunctive relief to prevent, restrain, correct or abate such violations or threatened violations.
- C. **Civil Action or Cost as a Special Tax.** If any person fails to comply with any provision of this Ordinance, the City may recover costs incurred for corrective action in a civil action in any court of competent jurisdiction or, at the discretion of the City Council, the costs may be certified to the City Clerk as a special tax against the real property involved to the extent allowed by law. (Ord. 91-15, August 12, 1991)

7-8-9: LIABILITY AND INDEMNIFICATION:

- A. **Liability.** Compliance with this Ordinance does not act to shift any liability legally accruing to the generator, collector or facility owner or operator to the City. The City functions as a regulator only and is not participating in the management of any waste generation, collection or facility operation other than its own waste generation and disposal processes.
- B. **Generators Indemnification.** Each generator of waste residing within the City shall take all reasonable precautions necessary to protect the public from injury and shall defend, indemnify and save the City harmless from any liability, claims, damages, costs, judgments, expenses and claims of damages that may arise by reason of any tort claim for bodily or personal injury, disease, death or damage to property resulting directly or indirectly from an act or omission of the generator including any generator acting as a collector and self transporter by transporting that generator's own waste to a facility.
- C. **Collectors Indemnification.** Each collector of waste operating within the City shall take all reasonable precautions necessary to protect the public from injury and shall defend, indemnify and save the City harmless from any liability, claims, damages, costs, judgments, expenses and claims of damages that may arise by reason of any tort claim for bodily or personal injury, disease, death or damage to property resulting directly or indirectly from an act or omission of the collector, its agents, employees, or independent contractors, or anyone for whom any of them may be liable.

D. **Facility Indemnification.** Each facility of any type located within the City shall take all reasonable precautions necessary to protect the public from injury and shall defend, indemnify and save the City harmless from any liability, claims, damages, costs, judgments, expense and claims of damages that may arise by reason of any tort claim for bodily or personal injury, disease, death or damage to property resulting directly or indirectly from an act or omission of the facility owner or operator, their agents, employees, or independent contractors, or anyone for whom any of them may be liable. (Ord. 91-15, August 12, 1991)

7-8-10: SEPARABILITY CLAUSE: Should any court of competent jurisdiction adjudge any provision of this Ordinance invalid, such judgment shall not affect any other provision of this Ordinance not specifically included in such judgment. (Ord. 91-15, August 12, 1991)

7-8-11: PROVISIONS CUMULATIVE: The provisions of this Ordinance are cumulative and are additional limitations upon all other laws and ordinances covering any subject matter in this Ordinance. (Ord. 91-15, August 12, 1991)

SECTION 9

CABLE ORDINANCE

Section:

7-9-1	Intent
7-9-2	Short Title
7-9-3	Definitions
7-9-4	Franchises
7-9-5	Construction Standards
7-9-6	System Design and Extension Provisions
7-9-7	Consumer Protection and Customer Service Standards
7-9-8	Community Services
7-9-9	Administration Provisions
7-9-10	Indemnification and Insurance
7-9-11	Franchise Transfer or Abandonment
7-9-12	Protection of Individual Rights
7-9-13	Unauthorized Connections and Modifications
7-9-14	Enforcement of the Cable Ordinance or Franchise

7-9-1: INTENT:

- A. **Findings.** The City finds that multiple providers may be interested in providing cable service in the City. The City is authorized to grant one (1) or more non-exclusive franchises to provide cable service in the City. (Ord. 02-21, October 28, 2002)
- B. **Intent.** The City's intent in adopting this cable ordinance is to further the public interest in the delivery of cable service and ensure that all providers of cable service are subject to comparable burdens consistent with applicable law. This Cable Ordinance may encourage further development of, and competitive choices for, cable service and related communications services in the City. Such a development could contribute significantly to the communication needs and desires of residents of the City, benefit local economic development, and improve public and municipal services. (Ord. 02-21, October 28, 2002)

7-9-2: SHORT TITLE: This ordinance will be known and cited as the "Cable Ordinance." (Ord. 02-21, October 28, 2002)

7-9-3: DEFINITIONS: For the purposes of this Cable Ordinance, the following terms, phrases, words, and their derivations must have the meaning given herein. Terms, phrases and words contained in this Cable Ordinance that are not defined herein or in a franchise will have their normal and customary meaning. When not

inconsistent with the context, words on the singular number include the plural number. The words “must” and “will” are always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

Basic Cable Service: Any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by a franchise.

Cable System: A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (2) a facility that serves subscribers without using any right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of 47 U.S.C. 521, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. 573; or (5) any facilities of any electric utility used solely for operating its electric utility system.

Cable Service: (1) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Channel: A portion of the electromagnetic frequency spectrum which is used in a system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

City: The City of Otsego, Minnesota, a municipal corporation, in the State of Minnesota.

Competition: The offering of cable service to substantially the same potential customers in the City by two (2) or more providers pursuant to franchises.

Drop: The cable that connects the ground block on the subscriber’s terminal device to the nearest feeder cable of the system.

FCC: The Federal Communications Commission, or its lawful successor.

Franchise, Cable Franchise, Franchise Agreement: An agreement between the City and any provider of cable service pursuant to this Cable Ordinance granting an initial authorization, or renewal thereof, to provide cable service or operate a system in the City.

Fee: A franchise fee, a fee on gross revenues in lieu of a franchise fee or an assessment imposed by the City on a grantee solely because of its status as a recipient of a franchise. The term “franchise fee” does not include: (i) any tax, fee or assessment of general applicability; (ii) capital costs which are required by the franchise related to the provision of public, educational, or governmental access facilities; (iii) requirements or charges incidental to awarding or enforcing the franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties, or liquidated damages; (iv) any fee imposed under Title 17 of the United States Code.

Grantee: Any recipient of a franchise, and its agents and employees, lawful successors, transferees, or assignees.

Gross Revenues: All revenues received by a grantee or its affiliates from the sale or provision of cable service in the City. By way of example and not limitation, gross revenues shall include all carriage revenues received by a grantee or its affiliates from unaffiliated video programming providers, and any advertising revenues received by a grantee or its affiliates in connection with the provision of cable service. Gross revenues shall not include bad debt, any taxes or fees on services furnished by grantee imposed by any municipality, state, or other governmental unit and collected by grantee for such governmental unit, revenues received by the grantee or its affiliates from the provision of telecommunications services in the City, fees collected by a grantee or its affiliates from subscribers, and any other fees collected by a grantee or its affiliates from subscribers to support PEG access facilities.

Installation: The connection of the system with the subscriber terminal device.

Lockout Device: An optional mechanical or electrical accessory to a terminal device which inhibits the viewing of a certain program, certain channel or channels provided over a system.

Normal Business Hours: Those hours during which most businesses in the City are open to serve customers. Normal business hours generally means between eight o'clock (8:00) AM and five o'clock (5:00) PM, but must include some evening hours at least one (1) night per week and/or some weekend hours.

Normal Operating Conditions: Those service conditions which are within the control of a grantee. Those conditions which are not within the control of a grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of a grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade/construction of a grantee's facilities.

Open Video System: A facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to

provide cable service which includes video programming and which is provided to multiple subscribers within a community, provided that the FCC has certified such open video system complies with 47 C.F.R. subpart S.

Pay Television: The delivery of pay-per-channel or pay-per-program audio visual signals to subscribers for a fee or charge, in addition to the charge for cable service.

PEG Access Facilities: Public, educational, and governmental programming channels, or any equipment or facilities for use of such channels.

Person: Any natural person, firm, partnership, association, corporation, company, or other legal entity.

Right-of-Way or Rights-of-Way: The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local government unit has an interest, including other dedicated rights-of-way for travel purposes and utility easements of local government units. Right-of-way does not include the air waves above a right-of-way with regard to wireless or other non-wire telecommunications or broadcast service.

Right-of-Way Ordinance: An ordinance adopted by the City creating requirements regarding regulation, management and use of rights-of-way, including registration and permitting requirements.

Standard Installation: Any residential installation that can be completed using a drop of one hundred fifty (150) feet or less.

Subscriber: Any person who lawfully receives cable service via a system.

System: A cable system, an open video system, or any other network of antennas, cables, wires, lines, towers, wave guides, or other conductors, terminal devices, equipment, or facilities located in whole, or in part, in the City and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing cable service in the City.

Telecommunications Services: The meaning ascribed in 47 U.S.C. 153(46), as may be explained or interpreted by final action of the FCC.

Terminal Device: An electronic device that converts signals to a form accessible by the subscriber. (Ord. 02-21, October 28, 2002)

7-9-4: FRANCHISES:

A. Generally.

1. No person may provide cable service in the City, nor operate a system in the City, unless and until such person is granted a franchise. All franchises must be granted pursuant to the provisions of this Cable Ordinance.
2. Any franchise granted hereunder will authorize the grantee to deliver cable service and construct, operate, and maintain a system in the rights-of-way in the City.
3. All franchises shall be non-exclusive, and City may grant additional franchises at any time. To the extent consistent with applicable law, the City will not grant a franchise for an area included in an existing franchise on terms and conditions more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area service; (2) public, educational, or governmental access requirements; or (3) franchise fees, unless the area in which the additional franchise is being sought is not actually being served by an existing grantee. The City may impose additional terms and conditions on any additional franchises.
4. This Cable Ordinance and franchises granted pursuant hereto are intended to comply with Minnesota Statutes Chapter 238 and applicable law. Any applicable requirement established by Minnesota Statutes 238.084 not expressly incorporated in this Cable Ordinance or a franchise shall be deemed incorporated by reference in the franchise as those fully set forth therein.
5. The performance of any grantee is subject to periodic evaluation by the City upon reasonable notice to the grantee.

B. Use of Rights-of-Way.

1. Use of the rights-of-way to provide cable service and operate a system must not be inconsistent with the terms and conditions by which such rights-of-way were created or dedicated and is subject to all legal requirements related to the use of such rights-of-way.
2. The City may adopt and enforce a right-of-way ordinance and all grantees shall be subject to such right-of-way ordinance. To the extent that rights, duties, and obligations regarding the use of rights-of-way are specifically addressed in a franchise, such franchise terms shall prevail over any conflicting provisions of a right-of-way ordinance. The terms of the Cable Ordinance shall be subordinate to any conflicting provisions of a right-of-way ordinance. A grantee shall not, through adoption or amendment of a right-of-way ordinance be subject to additional burdens or obligations with respect to usage of the right-of-way which exceed the burdens on other users of the right-of-way under a right-of-way ordinance.

3. The City may construct, maintain, repair or relocate sewers; grade, pave, maintain, repair, relocate and/or alter any right-of-way; construct, repair, maintain or relocate water mains; or construct, maintain, relocate, or repair any sidewalk or other public work.
 4. All system facilities, lines and equipment in the City must be located so as not to obstruct or interfere with the proper use of rights-of-way, alleys and other public ways and places, and cause minimum interference with the rights of property owners who abut any of the said rights-of-way, alleys and other public ways and places, and not interfere with existing public utility installments.
 5. A grantee must file with the City maps, plats, or other record of the location and character of all facilities constructed in the City, including underground facilities. A grantee must update such maps, plats and permanent records annually if changes have been made in the system. Consistent with applicable State law, grantee may identify such maps, plats or other records as "confidential trade secret", and City shall comply with all State laws regarding the protection and dissemination of such materials.
 6. If the City alters, or changes the grade or location of any right-of-way, alley or other public way, a grantee shall, at its own expense, upon reasonable notice by City, remove and relocate poles, wires, cables, conduits, manholes and other system fixtures, and in each instance comply with the standards and specifications of City. If City reimburses other occupants of the right-of-way, the affected grantee will be likewise reimbursed.
 7. A grantee shall not place poles, conduits, or other system fixtures where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any right-of-way shall be so placed as to comply with all lawful requirements of City.
 8. A grantee will, on request of any person holding a moving permit issued by the City, temporarily raise or lower its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and the grantee will be given no less than ten (10) business days advance notice to arrange for such temporary changes. A grantee may require payment in advance.
 9. A grantee will be liable for the failure to exercise reasonable care during construction, operation or maintenance of a system.
- C. **Tree Trimming.** A grantee is authorized to trim trees in or overhanging rights-of-way to prevent the branches of such trees from coming in contact with wires

and cables of a system, or as is otherwise necessary to protect a system. The City may condition the authority to trim trees as it deems appropriate and may supervise tree trimming activities.

D. **Franchise Term.** Franchises will be granted for a term established in the franchise agreement. No franchise agreement may be granted for a period exceeding fifteen (15) years from the date of acceptance by grantee.

E. **Regulation of Cable Service.**

1. The requirements of this Cable Ordinance define the City's regulatory authority over systems and cable services subject to applicable laws. All grantees are subject to all lawful exercise of the City's police power, ordinance-making authority and power to eminent domain.
2. The terms of franchise agreement define the contractual rights and obligations of the City and the grantee there under.

F. **Initial Franchise Applications.**

1. Upon request or its own initiative, the City may initiate a cable franchise application process consistent with Minnesota Statutes Section 238.081 and other applicable laws. Any person desiring an initial franchise must file an application with the City.
2. The City will establish an application fee in an amount to offset the costs of processing applications and awarding a franchise. Such application fees will not constitute a franchise fee.
3. Upon receipt of an application for a franchise, City staff will prepare a report and recommendations to the City Council regarding the application(s).
4. A public hearing concerning applications will be held prior to reflection or acceptance of applications, and aware of any franchises.

G. **Franchise Renewal.** Franchise renewals will be conducted in accordance with applicable laws. To the extent consistent with applicable laws, the City will require reimbursement of the City's expenses incurred in processing the renewal. (Ord. 02-21, October 28, 2002)

7-9-5: CONSTRUCTION STANDARDS:

A. **Registration, Permits and Construction Codes.**

1. Within ninety (90) days of acceptance of a franchise, the grantee must apply for the necessary governmental permits, licenses, certificates, and authorizations to construct, repair, replace, relocate, operate, maintain or reconstruct a system. Grantees must strictly adhere to all State and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the facilities used to provide cable service in the City.
2. The City may inspect any construction or installation work performed pursuant to the provisions of a franchise. The City may make such tests as it must find reasonably necessary to ensure compliance with the terms of this Cable Ordinance, the franchise, and applicable provisions of local, State and Federal law.

B. Repair of Rights-of-Way and Property.

1. Any rights-of-way or other property disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of a system shall be fully and promptly restored, subject to weather conditions (i.e., winter conditions/frozen ground), by the grantee performing such work, at its expense, to a condition as good as that prevailing prior to such work.
2. If a grantee fails to promptly perform the restoration required herein, the City shall have the right, following ten (10) business days written notice to grantee, to restore rights-of-way and other public property to a condition as good as that prevailing prior to the grantee's work. The City shall be fully reimbursed by the grantee for its actual costs relating to such restoration.

C. Undergrounding of Facilities.

1. In all areas of the City where utility facilities are required to be placed underground, or where all other utility lines are underground, all grantees must construct and install system facilities underground.
2. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground, but such facilities shall be of such size, design, and location as not to be unsightly or unsafe, as reasonably approved by the City.
3. A grantee must bury new drops within a reasonable time period, which must not exceed fifteen (15) business days, subject to weather conditions. In the event the ground is frozen, a grantee will be permitted to delay burial until the ground is suitable for burial which in no event must be later than June 30th.

D. Erection, Removal and Joint Use of Poles.

1. A grantee must at all times employ ordinary and reasonable care in the construction, installation, and maintenance of system facilities and must use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. All system facilities must at all times be kept and maintained in good condition, order, and repair so that the same must not menace or endanger the life or property of the City or any person.
2. A grantee must install and maintain equipment and facilities in accordance with all applicable Federal, State and local laws and regulations, and the requirements of the National Electric Safety Code and in such manner that they will not interfere with private radio, police and fire communications or any installations of City or of any public utility serving City. (Ord. 02-21, October 28, 2002)

7-9-6: SYSTEM DESIGN AND EXTENSION PROVISIONS:

A. System Capacity and Channels. At a minimum, any franchise granted hereunder shall describe the grantee's network in terms of the total system capacity such as the total number of analog and digital video channels which can be provided, and the minimum number of video channels which will be offered.

B. Cable Service Availability.

1. Any franchise granted hereunder may authorize cable service throughout the City, or a portion thereof.
2. Each franchise will identify a required service area. A grantee will be required to offer cable service to all dwellings, homes and businesses within its required service area. Franchises may authorize and require cable service throughout the corporate boundaries of the City, as it exists from time to time, or such smaller area as the City reasonably and lawfully deems appropriate and is agreeable to the grantee.
3. Any franchise granted hereunder may establish requirements for the extension of the system and provision of cable service beyond the initially required service area.
4. Cable service shall not be denied to any group of potential residential cable subscribers because of the income of the residents of the area in which such group resides.

- C. **Non-Standard Installations.** Grantees must provide cable service to any person requesting other than a standard installation provided the cable service can meet FCC technical specifications and all payment obligations are met, except that a grantee may charge for the incremental increase in material and labor costs incurred above the cost of making a standard installation.
- D. **Technical Standards.** Any system offering cable service in the City must comply, at minimum, with the technical standards promulgated by the FCC relating to cable systems pursuant to Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time.
- E. **System Testing.**
1. In the event City finds that there are signal or system performance difficulties which may constitute violations of applicable FCC technical standards, the grantee will be notified and afforded fifteen (15) business days to investigate and, if necessary, correct problems or complaints. If the performance difficulty is not resolved within fifteen (15) days, the City may require the grantee to demonstrate compliance via testing or other means selected by the grantee.
 2. If a performance difficulty continues after the provision of Section 6.5(a), the City may test any system or facilities used to provide cable service in the City. The City will seek to arrange its testing so as to minimize hardship or inconvenience to grantee and subscribers. In the event that testing reveals that the source of the technical difficulty is within the grantee's reasonable control, the cost of the testing must be borne by the grantee. If the testing reveals the difficulties to be caused by factors that are beyond grantee's reasonable control, the cost of the testing must be borne by the City.
- F. **FCC Reports.** Grantees must, upon written request from City, file all required FCC technical reports with the City.
- G. **Non-Voice Return Capability.** Grantees are required to provide a system with capacity and technical capability to provide non-voice return communications.
- H. **Lockout Device.** Grantees shall provide by sale or lease a lockout device to any requesting subscriber.
- I. **Emergency Alert System.** All grantees must provide an emergency alert system (EAS) that complies with FCC requirements. Grantees must further ensure that City can insert, or direct the insertion of, brief audio and video emergency messages simultaneously on all channels. The City shall indemnify grantee for City's use of a system for emergency messages unless such use is consistent with the FCC's EAS requirements. (Ord. 02-21, October 28, 2002)

7-9-7: CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS:

- A. **Enforcement of Customer Service Standards.** Section 7-9-7 shall be fully applicable except during periods when competition exists in the City in areas where competition exists in the City, except that the City may initiate enforcement of this section while competition exists in the event the City receives, in any thirty (30) day period, at least five (5) written complaints with respect to each competitor concerning similar customer service issues. In such case, the City Council may initiate enforcement of this section by adopting a resolution indicating the basis for initiating enforcement.
- B. **Regulation of Cable Service Rates.**
1. The City may regulate rates for the provision of cable service to the extent allowed under Federal or State law(s).
 2. Grantees must file a list of current subscriber rates and charges with the City, which lists will be maintained on file with City and will be available for public inspection. Grantees must give the City and subscribers written notice of any change in a cable service rate or charge no less than thirty (30) days prior to the effective date of the change.
- C. **Sales Procedures.** A grantee may not exercise deceptive sales procedures when marketing any of its cable services within the City. Grantees may conduct marketing consistent with local ordinances and other applicable laws and regulations.
- D. **Telephone Inquiries and Complaints.**
1. A grantee must maintain local, toll free or collect call telephone access lines which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week.
 2. During normal business hours, trained representatives of grantee must be available to respond to subscriber inquiries. Grantees must ensure that: (1) an adequate number of trained company representatives will be available to respond to customer telephone inquiries during normal business hours, and; (2) after normal business hours, the access line will be answered by a trained company representative or a service or an automated response system such as an answering machine.
 3. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

E. Telephone Answer Time and Busy Signals.

1. Under normal operating conditions, telephone answer time by a customer representative, including wait time, must not exceed thirty (30) seconds when the connection is made. If the case needs to be transferred, transfer time must not exceed thirty (30) seconds.
2. These standards must be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer must receive a busy signal less than three (3) percent of the time.

F. Installation, Outage and Service Calls. Under normal operating conditions, each of the following standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis.

1. Excluding conditions beyond the reasonable control of a grantee which prevent performance, grantees will begin working on service interruptions promptly, and in no event later than twenty-four (24) hours after the interruption becomes known, and grantees must begin actions to correct other service problems the next business day after notification of the service problem and resolve such problems as soon as is reasonably possible.
2. The “appointment window” alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during normal business hours. Grantees may schedule service calls and other installation activities outside of normal business hours for the convenience of the customer.
3. A grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
4. If a representative of a grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be re-scheduled, as necessary, at a time during normal business hours which is convenient for the customer.

G. Complaint and Other Service Records.

1. Upon written request by the City, and subject to a grantee’s obligation to maintain the privacy of certain information, grantees must prepare and maintain written records of all complaints received and the resolution of such complaints, including the date of such resolution.

2. Written complaint records must be on file at the office of a grantee. Upon written request by the City, grantees must provide the City with a written summary of such complaints and their resolution on a quarterly basis and in a form mutually agreeable to the City and grantee.
 3. Upon written request by the City, grantees must provide detailed compliance reports on a quarter basis with respect to the objectively measurable service standards required in this Section. A grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards contained in this Section unless a historical record of complaints indicates a failure to comply.
- H. **Subscriber Contracts.** Grantees must provide to the City upon request any standard from subscriber contract utilized. If no such written contract exists, grantee must provide a document completely and concisely stating the length and terms of the subscriber contract offered to customers.
- I. **Video Programming.** All franchises will identify the initial video channels to be provided by a grantee. To the extent required by 47 U.S.C. 544(b), prior City approval is required for any change in the broad categories of video programming provided. Individual programming decisions may be made in the discretion of a grantee.
- J. **Billing and Subscriber Communications.**
1. A grantee must give the City and Subscribers thirty (30) days advance written notice of any changes in rates, programming services, or channel alignments.
 2. Bills must be clear, concise, and understandable. Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the grantee must respond to a written complaint from a subscriber within thirty (30) days.
- K. **Refunds and Credits.**
1. If a grantee's cable service is interrupted or discontinued for twenty-four (24) or more consecutive hours, its subscribers must be credited pro rate for each interruption. Credits must be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.
 2. In the event a subscriber establishes or terminates cable service and receives less than a full month's cable service, the grantee must prorate the monthly rate on the basis of the number of days in the period for which cable service was rendered to the number of days in the billing. Refund

checks will be issued promptly, but no later than the return of the equipment supplied by the grantee is cable service is terminated.

- L. **Local Office/Drop Box.** Grantees must maintain a local office or a local drop box for receiving subscriber payments.
- M. **Additional Customer Service Requirements.** The City may adopt additional or modified customer service requirements to address subscriber concerns or complaints. Such requirements must be consistent with applicable laws. (Ord. 02-21, October 28, 2002)

7-9-8: COMMUNITY SERVICES:

- A. **PEG Access Facilities.** Franchises will establish obligations to provide PEG access facilities to meet the community's needs and interests.
- B. **Service to Public or Educational Institutions:** Franchises will establish obligations for the provision of free or reduced cost services to identified public or educational institutions. (Ord. 02-21, October 28, 2002)

7-9-9: ADMINISTRATION PROVISIONS:

A. Administration of Franchise.

- 1. The City Administrator will have continuing regulatory supervision over systems, cable services, and franchise compliance; provided, however, the City Council shall have the sole authority to hold hearings and take final enforcement action as provided in Section 7-9-14.A or revoke a franchise as provided for in Section 7-9-14.B.
- 2. The City Administrator may delegate this regulatory supervision by giving written notice of such delegation to affected grantees. Grantees must cooperate with any such delegate of the City Administrator.

B. Fee.

- 1. A grantee must pay to the City a fee in the amount established in the franchise agreement.
- 2. Fee payments are payable quarterly. Fee payments must be made within sixty (60) days of the end of each calendar quarter.
- 3. Each fee payment must be accompanied by a report certified by an officer of the grantee, in form reasonably acceptable to City, detailing the

computation of the payment. All amounts paid must be subject to audit and re-computation by the City and acceptance of any payment must not be construed as an accord that the amount paid is in fact the correct amount.

4. A grantee may designate that portion of a subscriber's bill attributable to the fee as a separate line item on the bill.

C. Access to Records.

1. The City may, upon reasonable notice and during normal business hours, and subject to the privacy provisions of 47 U.S.C. 521 et seq., inspect any records maintained by a grantee which relate to its franchise or system operations, including specifically grantee's records relating to gross revenues. Grantees must make copies of documents upon City's reasonable request but may identify and label any such documents as "confidential trade secret" in accordance with Section 7-9-9.C.1.
2. Grantees must prepare and furnish to the City such reports with respect to the operations, affairs, transactions or property, as they relate to this franchise or cable services as City may reasonably request. (Ord. 02-21, October 28, 2002)

7-9-10: INDEMNIFICATION AND INSURANCE:

A. Indemnification of the City.

1. A grantee must indemnify, defend and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents (an "indemnified party") from and against any loss or damage to any real or personal property of any person, or for any injury to or death of any person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to a system or other facilities used by a grantee to deliver cable service.
2. A grantee must indemnify, defend, and hold harmless an indemnified party from and against all lawsuits, claims, actions, liability, damages, costs, expenses or penalties incurred as a result of the award or enforcement of a franchise.
3. A grantee shall not be required to provide indemnification or defense for any intentional misconduct, willful neglect or negligence by an indemnified party, for any enforcement action taken by an indemnified party against a grantee, or for any claim based solely on the City's operation of PEG

access facilities, delivery of PEG access programming, or EAS messages originated by the City.

4. With respect to each claim for indemnification:
 - a. The indemnified party must promptly notify the grantee in writing of any suit, claim, or proceeding which gives rise to such right.
 - b. The grantee must afford the indemnified party an opportunity to participate in any compromise, settlement, or other resolution or disposition of any suit, claim or proceeding.
 - c. The indemnified party must cooperate with reasonable requests of the grantee, at grantee's expense, in its participation in a suit, claim or proceeding.
5. Subject to the limitations in Minnesota Statutes Chapter 466, the City shall indemnify, defend and hold a grantee harmless for any damage resulting from any intentional misconduct, willful neglect or negligence by an indemnified party in utilizing any PEG access facilities or PEG channels, or in connection with work performed on or adjacent to the system.

B. Insurance.

1. A grantee must obtain and maintain in full force and effect, at its sole expense, a comprehensive general liability insurance policy, in protection of the grantee, and the City, its officers, elected officials, boards, commissions, agents and employees for damages which may arise as a result of operation of the system or delivery of cable service.
2. The policies of insurance must be in the sum of not less than one million dollars (\$1,000,000.00) for personal injury or death of any one (1) person, and two million dollars (\$2,000,000.00) for personal injury or death or two (2) or more persons in any one (1) occurrence, five hundred thousand dollars (\$500,000.00) for property damage to any one (1) person and two million dollars (\$2,000,000.00) for property damage resulting from any one (1) act or occurrence.
3. The insurance policy must be maintained by grantee in full force and effect during the entire term of the franchise. Each certificate of insurance must contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for non-payment of premium, or otherwise, and whether at the request of grantee or for other reasons, except after thirty (30) days advance written notice have been provided to the City. (Ord. 02-21, Oct. 28, 2002)

7-9-11: FRANCHISE TRANSFER OR ABANDONMENT:

A. **Abandonment of Service.** A grantee may not discontinue the provision of cable service without having first given three (3) months written notice to the City.

B. **System Removal After Abandonment, Termination or Forfeiture.**

1. In the event of termination or forfeiture of the franchise or abandonment of the system, the City may require the grantee to remove all or any portion of its system from all rights-of-way and public property within the City; provided, however, that the grantee will not be required to remove its system to the extent it is authorized to provide telecommunications services or non-cable services over the system.
2. If the grantee has failed to commence removal of its system, or such part thereof as was designated by the City, within one hundred twenty (120) days after written demand for removal is given, or if the grantee has failed to complete such removal within twelve (12) months after written demand for removal is given, the City may apply funds secured by the franchise toward removal and/or declare all right, title, and interest in the system to be in the City with all rights of ownership including, but not limited to, the right to operate the system or transfer the system to another for operation by it pursuant to the provisions of 47 U.S.C. 547.

C. **Sale or Transfer of Franchise.**

1. No sale or transfer of ownership of a grantee or “fundamental corporate change” in a grantee as defined in Minnesota Statutes 238.083, nor sale or transfer of a franchise, is permitted without City approval. Any sale or transfer of stock in a grantee creating a new controlling interest constitutes a sale or transfer of ownership. A “controlling interest” includes majority stock ownership or a lesser amount sufficient to confer actual working control in whatever manner exercised. City approval is not required where a grantee grants a security interest in its franchise or system to secure an indebtedness.
2. A grantee must file a written request with the City prior to any transaction described above. The City will approve or deny a transfer request within one hundred twenty (120) days of receipt of a written request. The City will not unreasonably withhold, delay or condition its approval.
3. In no event will a transaction be approved under Section 7-9-11.C.1 unless the transferee becomes a signatory to, and assumes all rights and obligations under, the franchise.

4. In the event of any proposed transaction described above, the City will have the right to purchase the system. In the event a grantee has received a bona fide offer for purchase of its system, the City shall have the right to purchase for the price which the proposed assignee or transferee agreed to pay. The City will be deemed to have waived its right to purchase the system in the following circumstances:
 - a. The City does not notify the grantee in writing, within ninety (90) days of notice, that it accepts all material terms and conditions of the purchase of the system; or
 - b. The City approves the transaction. (Ord. 02-21, Oct. 28, 2002)

7-9-12: PROTECTION OF INDIVIDUAL RIGHTS:

- A. **Discriminatory Practices Prohibited.** No grantee may deny cable service or otherwise discriminate against citizens or businesses on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability.
- B. **Subscriber Privacy.**
 1. Grantees must comply with the subscriber privacy-related requirements of 47 U.S.C. 551.
 2. No signals of a Class IV channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written authorization of the subscriber.
 3. No lists of the names and addresses of subscribers or any lists that identify the viewing habits of subscribers may be sold or otherwise made available to any party other than to grantee and its employees for internal business use, and also to the subscriber subject of that information, without the express written authorization of the subscriber.
 4. Written subscriber authorization is limited to a period not to exceed one (1) year. Subscriber authorization may be renewed at the option of the subscriber. No penalty may be invoked for a subscriber's failure to provide or renew such authorization. The authorization must be revocable at any time by the subscriber without penalty of any kind whatsoever.
 5. Written authorization from a subscriber is not required for conducting system-wide or individually addressed electronic sweeps to verify system integrity or monitor for billing purposes. This information must be kept

confidential subject to the provision set forth in Section 7-9-12.B.2 of this Section. (Ord. 02-21, Oct. 28, 2002)

7-9-13: UNAUTHORIZED CONNECTIONS AND MODIFICATIONS:

A. Unauthorized Connections or Modifications Prohibited.

1. It is unlawful for any person, without the express consent of the grantee, to make or possess, or assist anybody in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of a grantee's system or receive cable service from a grantee's system without a grantee's authorization.
2. It is unlawful for any person to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of a system for any purpose whatsoever.
3. Any person found guilty of violating this section may be fined not less than one hundred dollars (\$100.00) and the costs of the action nor more than five hundred dollars (\$500.00) and the costs of the action for each and every subsequent offense. (Ord. 02-21, Oct. 28, 2002)

7-9-14: ENFORCEMENT OF THE CABLE ORDINANCE OR FRANCHISE:

A. Violations or Other Occurrences Giving Rise to Enforcement Action.

1. In order to take enforcement action pursuant to this Cable Ordinance or a franchise, the City must provide the grantee with written notice of the violation or other occurrence giving rise to the City's action.
2. The grantee shall have thirty (30) days subsequent to receipt of the notice to cure the violation or occurrence giving rise to the City's action. Alternatively, the grantee may, within fourteen (14) days of receipt of notice from the City, notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by the grantee to the City shall specify with particularity the matters disputed by grantee.
3. In the event a grantee does not timely cure to the City's reasonable satisfaction the violation or other occurrence giving rise to the City's action, or timely disputes whether a violation has occurred, the City will schedule a public hearing affording grantee due process. The City will endeavor to

schedule the hearing for a date within ninety (90) days of the initial violation notice. Notice of the hearing must be provided to the grantee.

4. At the completion of the hearing, the City will issue written findings of fact and its final determination. A grantee may not initiate legal proceedings until the City's final determination is issued.
5. In the event City determines that no violation has taken place, the City will rescind the notice of violation in writing.

B. Franchise Revocation.

1. In addition to all other rights and remedies that the City possesses pursuant to applicable law, equity and the terms of the franchise agreement, the City may revoke or terminate the franchise, and all rights and privileges pertaining thereto, in accordance with the procedures set forth in Section 7-9-14.A, if the City determines that:
 - a. The grantee has violated any material requirement or provision of the Cable Ordinance or a franchise and has failed to timely cure.
 - b. The grantee has attempted to evade any of the material provisions of the Cable Ordinance or a franchise.
 - c. The grantee has practices fraud or deceit upon the City.
 - d. The grantee has filed for bankruptcy.
2. During any revocation proceeding, including any appeal period, the franchise will remain in full force and effect unless the term thereof sooner expires.

- C. Compliance with Federal, State and Local Laws.** The City and grantee will conform to the State laws and rules regarding cable service or the system not later than one (1) year after they become effective, unless otherwise stated, and conform to Federal laws and regulations regarding cable service or the system as they become effective. (Ord. 02-21, Oct. 28, 2002)

SECTION 10

PEDDLERS, SOLICITORS, TRANSIENT MERCHANTS

Section:

7-10-1	Definitions
7-10-2	Licensing of Peddlers and Transient Merchants
7-10-3	License Exemptions
7-10-4	Ineligibility for License
7-10-5	Suspension and Revocation
7-10-6	Transferability
7-10-7	Registration Required
7-10-8	Transient Merchants Prohibited; Exceptions
7-10-9	Exclusions by Placard
7-10-10	Prohibited Activities
7-10-11	Identification
7-10-12	Penalty

7-10-1: DEFINITIONS: Unless otherwise expressly stated, whenever used in this chapter, the following words shall have the meaning given to them by this section:

PEDDLER: Any person who goes from dwelling to dwelling, business to business, street to street, or any other type of place to place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, or other personal property that the person is carrying or otherwise transporting. The term “peddler” shall mean the same as the term “hawker”.

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

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

TRANSIENT MERCHANT: Any person who engages in any temporary and transient business in this state, either in one locality, or in traveling from place to place in this state, selling goods, wares, and merchandise; and who, for the purpose of carrying on such business, hires, leases, occupies, or uses a building, structure, vacant lot, vehicle or railroad car for the exhibition and sale of such goods, wares, and merchandise. The term “transient merchant” does not include a seller or exhibitor in a firearms collector show involving two (2) or more sellers or exhibitors. (Ordinance 2016-08, adopted May 9, 2016)

7-10-2: LICENSING OF PEDDLERS AND TRANSIENT MERCHANTS:

- A. City License Required: Except as otherwise provided for by this chapter, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city. .

- B. City License Application: Application for a license to conduct business as a peddler or transient merchant shall be made at least fourteen (14) regular business days before the applicant desires to begin conducting business within city limits. Application for a license shall be made on a form provided by the City . All applications shall be signed by the applicant. Any fraud, misrepresentation, or false statement on the application shall constitute a violation of this Section. All applications shall include the following information:
 - 1. Applicant’s full legal name, and any other names used or known by in the past;
 - 2. All other names under which the applicant conducts business or to which applicant officially answers;
 - 3. A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features, etc.);
 - 4. Full address of applicant’s permanent residence;
 - 5. Telephone number of applicant’s permanent residence;
 - 6. Full legal name of any and all business operation(s) owned, managed, or operated by applicant, or for which the applicant is an employee or agent;
 - 7. Full address of applicant’s regular place of business (if any);
 - 8. Any and all business related telephone number(s) of the applicant;
 - 9. The type of business for which the applicant is applying for a license;

10. The dates during which the applicant intends to conduct business and the number of days he or she will be conducting business in the city;
 11. Any and all address (es) and telephone number(s) where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business;
 12. A statement as to whether or not the applicant has been convicted of any felony, gross misdemeanor or misdemeanor, for violation of any state or federal statute or any local ordinance, other than traffic offenses;
 13. A list of the five (5) most recent locations where the applicant has conducted business as a peddler or transient merchant;
 14. Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant;
 15. A general description of the items to be sold or services to be provided;
 16. All additional information deemed necessary by the city council;
 17. A list of all individuals to be covered by a group license;
 18. Source of items sold and the item's location at the time of licensing and time of sale;
 19. License plate and registration information for any vehicle to be used in conjunction with the licensed business and a description of the vehicle;
 20. Applicant's driver's license number or other acceptable form of identification;
 21. Recent passport style photograph of applicant;
 22. Proof of any required State license for transient merchant activities (not applicable to door-to-door solicitations).
 23. Written consent authorizing the City to request a criminal history background investigation in accordance with Chapter 2, Section 8 of the City Code.
- C. License Fees: All applications for a license under this chapter shall be accompanied by the fee established in the city's fee schedule as adopted from time to time by resolution of the City Council.

D. Procedure:

1. An application shall be determined to be complete only if all required information is provided. If the City determines that an application is incomplete, it shall inform the applicant of the information required to be provided prior to issuance of a license.
2. The City shall review the application and order any investigation, including background investigations, necessary to verify the information provided with the application.
 - a. Applicants for a license under this Section shall be subject to a criminal history background investigation, as required by Section 2-8-4 of the City Code and processed in accordance with Section 2-8-5 of the City Code.
3. The City shall either approve or deny the license within thirty (30) business days after receipt of a complete application.
4. If the application is denied, the applicant shall be notified in writing of the decision, the reason for the denial (including the provisions of Section 2-8-6 of the City Code), and the applicant's right to appeal the denial by requesting, within seven (7) days of the date of the denial a hearing pursuant to Minnesota Statutes 14.57 to 14.69 to be heard by the the City Administrator, other designated staff or a hearing officer appointed by the City Council within thirty (30) days of the date of the request. The final decision of the City Council following the hearing shall be appealed by petitioning the Minnesota Court of Appeals for a writ of certiorari. (Ordinance 2013-08, adopted February 25, 2013).

E. Duration: A license granted under this chapter shall be valid until the end of the calendar year in which it is granted. (Ordinance 2016-08, adopted May 9, 2016)

7-10-3: LICENSE EXEMPTIONS: The licensing requirements of this Chapter shall not apply to:

- A. Any person selling or attempting to sell, or to take or attempt to take orders for, any product grown, produced, cultivated, or raised on any farm or garden within the City. Such person must comply with the City's zoning ordinance and other applicable ordinances;
- B. Persons exercising that person's state or federal constitutional rights, except if that person's exercise of constitutional rights is merely incidental to a commercial activity;

- C. Persons selling personal property at wholesale to retailers;
- D. Daily newspaper sales; or
- E. Merchants or their employees or agents delivering goods in the regular course of business. (Ordinance 2016-08, adopted May 9, 2016)

7-10-4: INELIGIBILITY FOR LICENSE: The following shall be grounds for denying a license or registration under this chapter:

- A. The failure of the applicant to obtain and show proof of having obtained any required license;
- B. The failure of the applicant to truthfully provide any of the information requested by the City as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application;
- C. The conviction of the applicant for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner that will not adversely affect the health, safety, and welfare of the residents of the City. Such violations shall include, but not be limited to: burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person; or
- D. The revocation within the past five (5) years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant. (Ordinance 2016-08, adopted May 9, 2016)

7-10-5: SUSPENSION AND REVOCATION:

- A. City Council Action: Any license or registration issued under this chapter may be suspended or revoked at the discretion of the City for violation of any of the following:
 - 1. Fraud, misrepresentation, or incorrect statements on the application form;
 - 2. Fraud, misrepresentation, or false statements made during the course of the license activity;
 - 3. Conviction of any offense for which granting of a license could have been denied under this chapter;
 - 4. Violation of any provision of this chapter; or

5. Conducting the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.
- B. Notice: Prior to revoking or suspending any license issued under this chapter, the City shall provide the license holder with written notice of the alleged violation(s) and inform the licensee of the licensee's right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, the business address provided on the license application.
 - C. Hearing: Upon receiving the notice provided in subsection B of this section, the licensee shall have the right to request a hearing. If no request for a hearing is received by the city within ten (10) regular business days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within twenty (20) days from the date of the request. Within three (3) regular business days of the hearing, the City shall notify the licensee of its decision.
 - D. Emergency: If, in the discretion of the City, imminent harm to the health or safety of the public may occur because of the actions of a peddler, solicitor, or transient merchant licensed or registered under this chapter, the City may immediately suspend the person's license or registration and provide notice of the right to hold a subsequent hearing as prescribed in subsection B of this section.
 - E. Appeals: Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court. (Ordinance 2016-08, adopted May 9, 2016)

7-10-6: TRANSFERABILITY: No license issued under this chapter shall be transferred to any person other than the person to whom the license was issued. (Ordinance 2016-08, adopted May 9, 2016)

7-10-7: REGISTRATION REQUIRED: All solicitors shall be required to register and be licensed by the City in accordance with the procedures set forth by Section 7-10-2 of this Chapter. (Ordinance 2016-08, adopted May 9, 2016)

7-10-8: TRANSIENT MERCHANTS PROHIBITED; EXCEPTIONS: Transient merchants are specifically prohibited within the City except in the following circumstances:

- A. Transient merchants operating within a building;
- B. The sale of plants, flowers or Christmas trees; and
- C. Persons selling local farm or garden products.
- D. This chapter does not apply to persons selling personal property at wholesale to retailers, to daily newspaper sales, to merchants or their employees or agents delivering goods in the regular course of business, or to a person selling or peddling the products of the farm or garden.
- E. Transient merchants that are not prohibited must comply with City's zoning ordinance and any other applicable ordinances. (Ordinance 2016-08, adopted May 9, 2016)

7-10-9: EXCLUSION BY PLACARD: No peddler, solicitor, or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor, or transient merchant when the property is marked with a sign or placard at least three and three-quarter inches (3 3/4") long and three and three-quarter inches (3 3/4") wide with print of at least 48-point in size stating "No Peddlers, Solicitors, or Transient Merchants", or "Peddlers, Solicitors, and Transient Merchants Prohibited", or other comparable statement. No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section. (Ordinance 2016-08, adopted May 9, 2016)

7-10-10: PROHIBITED ACTIVITIES: No peddler, solicitor, or transient merchant shall conduct business in any of the following manners:

- A. Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk, or other public right of way.
- B. Conducting business in such a way as to create a threat to the health, safety, or welfare of any individual or the general public.
- C. Entering upon any residential premises for the purpose of carrying on the licensee's or registrant's trade or business between the hours of eight o'clock (8:00) P.M. and nine o'clock (9:00) A.M. of the following day, unless such person has been expressly invited to do so by the owner or occupant thereof.

- D. Failing to provide proof of license or registration and identification when requested or using the license or registration of another person.
- E. Failing to wear or display the certificate of registration or licensure provided by the City on the licensed or registered individual's outermost clothing or to return the certificate to the City in accordance with the requirements of this chapter.
- F. Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor, or transient merchant shall claim to have the endorsement of the City solely based on the city having issued a license or certificate of registration to that person.
- G. Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating, or abusive.
- H. Entering upon any premises or attempting to enter in or upon any premises wherein a sign or placard bearing the notice "peddlers or solicitors prohibited" or language similar thereto, is located.
- I. Selling or soliciting sales by transient merchants from public property or right of way or from private property unless they own the property or have written permission from the owner. (Ordinance 2016-08, adopted May 9, 2016)

7-10-11: IDENTIFICATION: All solicitors, peddlers and transient merchants must wear some type of identification conspicuously showing their name and the organization for which they are soliciting or peddling, must carry their City and/or County issued license or registration certificate when conducting the business or activity required to be licensed or registered under this chapter, and must wear or display on their outermost clothing the certificate of registration or licensure provided by the City. (Ordinance 2016-08, adopted May 9, 2016)

7-10-12: PENALTY: Violation of any provision of this chapter shall be a misdemeanor or a Code violation subject to Administrative enforcement. (Ordinance 2016-08, adopted May 9, 2016)

SECTION 11

RENTAL HOUSING

Section:

7-11-1	Purpose and Intent
7-11-2	Applicability
7-11-3	Definitions
7-11-4	Licenses
7-11-5	Inspection Criteria
7-11-6	Responsibilities of Owners and Applicants
7-11-7	Maximum Density
7-11-8	General Requirements
7-11-9	Minimum Standards for Basic Equipment and Facilities
7-11-10	Minimum Standards for Light and Ventilation
7-11-11	Dwellings Unfit for Human Habitation
7-11-12	Penalties and Violations

7-11-1: PURPOSE AND INTENT: It is the purpose of this Ordinance to assure that rental housing in the City of Otsego is decent, safe and sanitary and is so operated and maintained as not to become a nuisance to the neighborhood or to become an influence that fosters blight and deterioration or creates a disincentive to reinvestment in the community. The operation of rental residential properties is a business enterprise that entails certain responsibilities. Operators are responsible to take such reasonable steps as are necessary to assure that the citizens of the City who occupy such units may pursue the quiet enjoyment of the normal activities of life in surroundings that are: safe, secure and sanitary; free from crimes and criminal activity, noise, nuisances or annoyances; free from reasonable fears about safety of persons and security of property; and suitable for raising children.

With respect to rental disputes and except as otherwise specifically provided by the terms of this Ordinance, it is not the intention of the City to intrude upon the fair and acceptable relationship between tenant and landlord. The City does not intend to intervene as an advocate of either party, or to act as an arbiter, or to be receptive of complaints from a tenant or landlord which are not specifically and clearly relevant to the provisions of this Ordinance. In the absence of such relevancy, with regard to rental disputes, it is intended that the contracting parties exercise such legal rights as are available to them without the intervention of the City.

7-11-2: APPLICABILITY: Every rental dwelling unit and its premises used whole or in part as a home or residence, for a family or person, shall conform to the requirements of this Ordinance irrespective of when such building was constructed,

altered or repaired. This Ordinance establishes minimum standards for erected rental dwelling units, accessory structures and related premises.

7-11-3: DEFINITIONS: The following words, terms and phrases, when used in this Ordinance, shall have to following meanings:

Accessory Structure: A subordinate detached building or use which is located on the same lot on which the main building or use is situated and which is reasonably necessary and incidental to the conduct of the primary use of such main building or use.

Approved: When used in reference to the design and capabilities of physical systems of a dwelling, shall mean having passed the inspection of the Compliance official. The basis for passage of such inspection shall be an analysis of the effective state codes and an analysis of the degree to which the systems meet the standards established by such codes. It shall be the objective of the Compliance official, unless otherwise specified, to establish minimum qualifications for approval of such system, which qualifications can maintain substantial compliance with the effective state codes and can be achieved in a reasonably economical and practical manner.

Building: Any structure built for support, shelter or enclosure of persons, animals, chattel or movable property of any kind, and includes any structure.

Compliance Official: The City Building Official and his designated agents authorized to administer and enforce this article.

Dwelling: A building or portion thereof, designated exclusively for the residential occupancy, including one-family, two-family, multiple family dwellings and manufactured houses, but not including hotels, motels, or boarding houses.

Dwelling, Multiple (Apartment): A building designed with three (3) or more dwelling units exclusively for the occupancy of three (3) or more families living independently of each other, but sharing hallways, main entrances and exits. A two-family dwelling (duplex) shall be considered and classified as a multiple family dwelling.

Dwelling, Single-Family: A dwelling unit designed exclusively for occupancy by one (1) family.

1. Attached: A dwelling which is joined to another at one ore more sides by a party wall.
2. Detached: A dwelling unit not attached to another dwelling or structure or is entirely surrounded by open space.

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

(duplex) with a separate rooming unit(s) shall be considered and classified as a multiple family dwelling.

1. Double Bungalow: A two-family dwelling with two (2) units side-by-side.
2. Duplex: A two-family dwelling unit with one (1) unit above the other.

Dwelling Unit: A residential building or portion thereof intended for occupancy by one (1) or more persons with facilities for living, sleeping, cooking and eating but not including hotels, motels, nursing homes, seasonal cabins, boarding or rooming houses, resorts, tourist homes or trailers.

Family: An individual or two (2) or more persons related by blood, marriage, adoption or a group of not more than three (3) persons who need not be related by blood or marriage living together in a dwelling unit.

Garbage: Animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Habitable Building: Any building or part thereof that meets minimum standards for use as a home or place of abode by one or more persons.

Habitable Room: A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, furnace rooms, unfinished basements (those without required ventilation, required electric outlets and required exit facilities), pantries, utility rooms of less than 50 square feet of floor space, foyers, communicating corridors, stairways, closets, storage spaces and workshops, hobby and recreation areas in parts of the structure belowground level or in attics.

Heated Water: Water heated to a temperature of not less than 120 degrees Fahrenheit, or such lesser temperature required by government authority, measured at the faucet outlet.

Kitchen: A space which contains a sink with counter working space, adequate space for installing cooking and refrigeration equipment and adequate space for the storage of cooking utensils.

Lease: An agreement to rent. For use as a verb, see Rent.

Occupant: Any person (including the owner or operator) sleeping, cooking and eating in a dwelling unit or living and sleeping in a rooming unit.

Operator: The owner or his agent who has charge, care, control, or management of a building, or part thereof, in which dwelling units or rooming units are let.

Owner: Any person who, alone, jointly, or severally with others, shall be in actual possession of, or have charge, care or control of, any dwelling, dwelling unit, or rooming unit within the city as title holder, as employee or agent of the title holder, or as trustee or guardian of the estate or person of the title holder. Any such person representing the actual title holder shall be bound to comply with the provisions of this article to the same extent as the title holder.

Party Wall: A common wall which divides two (2) independent structures by a fire wall.

Permissible Occupancy: The maximum number of persons permitted to reside in a dwelling unit or rooming unit.

Plumbing: All of the following supplied facilities and equipment in a dwelling: gas pipes, gas burning equipment, water pipes, steam pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents and any other similar fixtures and the installation thereof, together with all connections to water, sewer and gas lines.

Premises: A platted lot or part thereof or unplatted parcel of land occupied by any dwelling or non-dwelling structure, including any such building, accessory structure or other structure thereon.

Public Hall: A hall, corridor or passageway for providing egress from a dwelling unit to a public way and not within the exclusive control of one family.

Refuse: All organic and non-organic waste, including garbage and rubbish.

Rent: Consideration paid for the use of premises, including, but not necessarily limited to, money, services and property. As a verb, the term "rent" means to get or give the use of premises in return for such consideration or any combination thereof. The term "rent" does not include arrangements whereby a relative, as defined in Minn. Stats. § 273.124, subd. 1(c), occupies a dwelling for no consideration or for consideration that includes no more than maintenance of the dwelling or premises, and which arrangement is detailed and sworn to in affidavits filed by each adult occupant of the dwelling and each person who is an owner of the dwelling.

Rental Dwelling: A building or portion thereof let for rent or lease, designed or used predominantly for residential occupancy of a continued nature, including single-family dwellings, attached or detached, and multiple-family dwellings, but not including hotels and motels.

Rental Dwelling Unit: A single residential accommodation let for rent or lease which is arranged, designed, used or, if vacant, intended for use exclusively as a domicile for one family. Where a private garage is structurally attached, it shall be considered as a part of the building in which the dwelling is located.

Repair: To restore to a sound and acceptable state of operation, serviceability or appearance.

Rodent Harborage: Any place where rodents can live, nest or seek shelter.

Rubbish: Solid wastes consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, grass and shrubbery clippings, wood, glass, brick, plaster, bedding, crockery and similar materials.

Substandard Dwelling: Any dwelling which does not conform to the minimum standards established by city ordinances.

Supplied: Paid for, furnished by, provided by or under the control of the owner, operator or agent of a dwelling. Whenever the terms "dwelling," "dwelling unit," "premises," and "structure" are used in this article, they shall be construed as though they were followed by the words "or any part thereof."

Toilet: A toilet, with a bowl and trap made in one piece, which is connected to the city water and sewer system or other approved water supply and sewer supply.

7-11-4: LICENSE:

- A. License Required. No person, firm or corporation shall operate a rental dwelling unit without first having obtained a license to do so from the City as provided for in this Ordinance. Each license shall be issued annually and shall expire one (1) year following the issuance thereof. License renewals for the following years shall be filed not less than thirty (30) days prior to the license expiration date. (Ord. 2008-25, Dec. 8, 2008)
- B. Application. Applications for rental licenses shall be made in writing to the City by the owner of the rental dwelling unit(s) or his/her designated agent. The applicant shall supply:
 - 1. The name, address and telephone number of the dwelling owner, the owning partners if a partnership and/or that of the corporate officers if a corporation.
 - 2. The name, address and telephone number of the designated resident agent, if any.
 - 3. The name, address and telephone number of the management representative.
 - 4. The name, address and telephone number of the vendee, if the dwelling is being sold through a contract for deed.

5. The legal address of the dwelling.
6. The type of dwelling.
7. The type and number of dwelling units within the dwelling.
8. Number of occupants.
9. A description of the procedure through which tenant inquiries and complaints are to be processed.
10. An acknowledgement that the owner or designated agent has received a copy of this Ordinance.
11. Certification of Taxes and Utilities Paid: Prior to approving an application for a rental housing license, the property owner shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the rental housing license application relates.

C. Fees.

1. Fees for renewal of licenses under this Section shall be due not less than thirty (30) days prior to the license expiration date. In cases of new unlicensed dwellings, license fees shall be due upon issuance of the certificate of occupancy. (Ord. 2008-25, Dec. 8, 2008)
2. The amount of license fees shall be as set forth in Section 2-4-2. The licensee shall not be entitled to a refund of any license fee upon revocation or suspension of the license. However, the licensee shall be entitled to a refund of any license fee, prorated monthly, upon proof of transfer of legal control or ownership.

D. Inspection Required. No license shall be issued or renewed under this Ordinance unless the rental dwelling and its premises conform to the ordinances of the City and the laws of the State. The City may require an inspection of such dwelling and premises to make that determination. Failure to schedule or allow such inspection shall be dealt with in the same manner as a violation of Section 5, Chapter 2 of the City Code.

E. Posting of License. Every licensee of a rental dwelling shall cause to be conspicuously posted in the main entryway of other conspicuous location therein the current license of the respective rental dwelling.

7-11-5: INSPECTION CRITERIA: The City may inspect any rental unit if it falls within one or more of the following criteria:

- A. Such a unit has been abandoned by the owner or the owner of such unit cannot be found.
- B. The rental dwelling unit license has been suspended, revoked or denied.
- C. Water, gas, or electric service to such unit has been discontinued as a result of nonpayment for more than thirty (30) continuous days.
- D. The unit is on a parcel of land which is on the list of delinquent taxes filed by the County Auditor with the court administrator of the district court pursuant to Minn. Stat. Section 279.05.
- E. The City has probable cause to believe that there exists within such unit one or more violations of the requirements of this ordinance.
- F. The unit of property within which the unit is located has, within the preceding six (6) months, renewed a license after suspension or revocation.
- G. The unit is the subject of a pending notice of the City's intent to suspend or revoke the rental license.
 - 1. The City Building Inspector is hereby authorized, in conformity with this Chapter, to inspect all rental dwelling units to enforce this section and all applicable safety codes.
 - 2. The City Building Inspector is authorized to inspect all rental dwelling units in dwellings, whether having a rental license hereunder or not. The inspection may include the building or structure containing the rental dwelling unit, the land upon which it is located and accessory uses or structures related to the rental dwelling unit. All inspections authorized by this section shall be limited to those which are done for the purpose of seeking compliance with the applicable safety codes, and shall take place only at reasonable hours or as may otherwise be agreed upon by the owner and the City Building Inspector.
 - 3. The City shall give notice to the owner of any violations of the applicable safety codes which are discovered during any inspection.

7-11-6: RESPONSIBILITIES OF OWNERS AND OCCUPANTS: No owner or other person shall occupy or let another person occupy any rental dwelling unit, unless the premises are clean, sanitary, fit for human occupancy and complies with all

applicable legal requirements of the State and the City, including the following requirements:

- A. License: The owner of a rental dwelling unit shall obtain and license and shall pass the required inspection prior to any occupancy of the rental dwelling unit.
- B. Maintenance:
 - 1. Shared or Public Areas: Every owner of a rental dwelling unit shall maintain in a clean, sanitary and safe condition, the shared or public areas of the building and premises thereof.
 - 2. Occupied Areas: All occupants of a rental dwelling unit shall maintain in a clean, sanitary and safe condition that part or those parts of the building and premises thereof that she/he occupies and controls.
- C. Storage and Disposal of Garbage and Rubbish:
 - 1. All occupants of a rental dwelling unit shall store and dispose of all their rubbish in a clean, sanitary and safe manner.
 - 2. All occupants of a rental dwelling unit shall store and dispose of all their garbage and any other organic waste which might provide food for insects and/or rodents in a clean, sanitary and safe manner.
 - 3. Every owner of a rental dwelling unit shall supply facilities of adequate size for the sanitary and safe storage and disposal of rubbish and garbage.
- D. Pest Control:
 - 1. Pest Extermination: Every owner of a rental dwelling unit shall be responsible for the extermination of vermin infestations and/or rodents on the premises. Every occupant of a dwelling unit containing more than one dwelling unit or an occupant of a nonresidential building containing more than one unit shall be responsible for the extermination whenever his unit is the only one infested. Notwithstanding, however, whenever infestations caused by the failure of the owner to maintain a building in a reasonable rodent-proof or reasonable vermin-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two (2) or more of the units in any building, extermination thereof shall be the responsibility of the owner. Whenever extermination is the responsibility of the owner, the extermination must be performed by a licensed pest control contractor.

2. Rodents:
 - a. No occupant of a rental dwelling unit shall accumulate boxes, lumber, scrap metal, or any similar materials in such a manner that may provide a rodent harborage in or about any dwelling unit or building. Stored materials shall be stacked neatly.
 - b. No owner of a rental dwelling unit shall accumulate or permit the accumulation of boxes, lumber, scrap metal, or any other similar materials in such a manner that may provide a rodent harborage in or about shared or public areas of a building or its premises. Materials stored by the owner or permitted to be stored by the owner shall be stacked neatly.
 - c. No owner or occupant of a rental dwelling unit shall store, place or allow to accumulate, any materials that may serve as food for rodents in a site accessible to rodents.
- E. Sanitary Maintenance of Fixtures and Facilities: Every occupant of a rental dwelling unit shall keep all supplied fixtures and facilities therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.
- F. Minimum Heating Capability and Maintenance: In every rental dwelling unit, when the control of the supplied heat is the responsibility of a person other than the occupant, a temperature of at least sixty eight degrees Fahrenheit (68°F), or such lesser temperature required by government authority, shall be maintained at a distance of three feet (3') above the floor and three feet (3') from exterior walls in all habitable rooms, bathrooms and water closet compartments from September through May.
- G. Minimum Exterior Lighting: The owner of a rental building shall be responsible for providing and maintaining effective illumination in all exterior parking lots and walkways.
- H. Driveways and Parking Areas: One (1) off-street parking space must be provided for each tenant age of eighteen (18) years or older. The owner of a rental building shall be responsible for providing and maintaining in good condition paved and delineated parking areas and driveways for tenants consistent with Section 20-21-4 of the Zoning Ordinance.
- I. Yards: The owner of the building shall be responsible for providing and maintaining the yards of premises consistent with Section 20-16-7 of the Zoning Ordinance.

- J. Exterior Storage: Owners and occupants of rental dwelling units shall comply with the City's exterior storage requirements as regulated by Section 20-16-16 of the Zoning Ordinance.
- K. Public Nuisances: Owners and occupants of rental dwelling units shall comply with the City's public nuisance ordinance as provided for in Chapter 5 of the City Code.
- L. The property owner shall be responsible for payment of all property taxes, City utility fees, special assessments, and interest. Delinquent utility accounts shall be subject to Section 6-2-5 of the City Code. (Ord. 2007-18, Nov. 13, 2007)

7-11-7: MAXIMUM DENSITY: No person shall occupy nor permit or let to be occupied any rental dwelling unit for the purpose of living therein, which does not comply with the following requirements.

- A. With the exception of tenants occupying a respective dwelling unit prior to February 12, 2007, the maximum permissible occupancy of any dwelling unit shall be determined as follows:
 - 1. For the first occupant, one hundred fifty (150) square feet of habitable room floor space and for every additional occupant thereof, at least one hundred (100) square feet of habitable room floor space.
 - 2. In no event shall the total number of occupants exceed two (2) times the number of habitable bedrooms, less kitchen, in the dwelling unit.
- B. Occupancy of a rental dwelling unit by a single family as defined by Section 20-2-2 of the City Code shall be exempt from the provisions of Section 7-11-7.A of this Section. (Ordinance 2014-09, adopted April 28, 2014)

7-11-8: GENERAL REQUIREMENTS: No person shall occupy, as owner/occupant, or let to another occupy, any rental building or rental dwelling unit which does not comply with the following requirements, unless specifically exempt:

- A. Minimum Ceiling Height: In order to qualify as habitable, rooms shall have a clear ceiling height of not less than seven feet six inches (7'6"); except, that in attics or top half stories used for sleeping, study, or similar activities, the ceiling height shall be not less than seven feet six inches (7'6") over at least one-half (1/2) of the floor area. In calculating the floor area of such rooms in attics or top half stories, only those portions of the floor area of the room having a clear ceiling height of five feet (5') or more may be included.
- B. Access through Sleeping Rooms and Bathrooms: No dwelling unit containing two (2) or more sleeping rooms shall have a room arrangement such that access to a

bathroom or water closet compartment intended for use by occupants of more than one sleeping room can be gained only by going through another sleeping room. A bathroom or water closet compartment shall not be used as the only passageway to any habitable room, hall, basement or cellar of any dwelling unit.

- C. Foundations, Exterior Walls and Roofs: The foundation, exterior walls, and exterior roof shall be substantially watertight and protected against vermin and rodents and shall be kept in sound condition and repair. The foundation element shall adequately support the building at all points. Every exterior wall shall be free of deterioration, holes, breaks, loose or rotting boards or timbers, and any other condition which might admit rain or dampness to the interior portion of the walls or to the interior spaces of the building. The roof shall be tight and have no defects which admit rain, and roof drainage shall be adequate to prevent rainwater from causing dampness in the walls. All exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by paint or other protective covering or treatment. If the exterior surface is unpainted or determined by the compliance official to be paint blistered, the surface shall be painted. If the exterior surface of the pointing of any brick, block or stone wall is loose or has fallen out, the surface shall be repaired.
- D. Windows, Doors And Screens: Every window, exterior door, and other exterior openings shall be substantially tight and shall be kept in sound condition and repair. Every window, door and frame shall be constructed and maintained in such relation to the adjacent wall construction as to completely exclude rain, wind, vermin and rodents from entering the building. Every openable window shall be supplied with 16 mesh screens during the insect season, and shall be equipped with an approved lock if located less than six feet (6') above adjacent grade.
- E. Floors, Interior Walls and Ceilings: Every floor, interior wall and ceiling shall be adequately protected against the passage and harborage of vermin and rodents, and shall be kept in sound condition and good repair. Every floor shall be free of loose, warped, protruding or rotted flooring materials. Every interior wall and ceiling shall be free of holes and large cracks and loose plaster and shall be maintained in a tight, weatherproof condition. Toxic paint and materials with a lasting toxic effect shall not be used. The floor of every toilet room, bathroom, and kitchen shall have a smooth, hard, nonabsorbent surface and shall be capable of being easily maintained in a clean and sanitary condition.
- F. Rodent proof: Every structure and the premises upon which it is located shall be maintained in a rodent free and rodent proof condition. All openings in the exterior walls, foundations, basements, ground or first floors, and roofs, which have a one-half inch (1/2") diameter or larger opening, shall be rodent proofed in an approved manner. Interior floors or basements, cellars, and other areas in contact with the soil shall be paved with concrete or other rodent impervious material.

- G. Fences: All fences shall consist of metal, wood, masonry, or other decay resistant material. Fences shall be maintained in good condition both in appearance and in structure. Wood material, other than decay resistant varieties, shall be protected against decay by use of paint or other preservatives. All fences shall be subject to the provision of Section 20-16-6 of the Otsego Zoning Ordinance.
- H. Grading And Drainage: During the period of May through October, every yard, court, passageway, and other portions of the premises on which a building stands shall be graded and drained so as to be free of standing water that constitutes a detriment to health and safety.
- I. Landscaping: Every yard of a premises on which a building stands shall be provided with lawn or combined ground cover of vegetation, garden, hedges, shrubbery, and related decorative materials, and such yard shall be maintained consistent with prevailing community standards. Nonresidential sites shall be maintained in accordance with an approved city landscape plan and shall be supplied with an irrigation system.
- J. Screening: All outside trash disposal facilities, recycling containers, and outside or rooftop mechanical equipment shall be screened from view by an opaque fence or wall high enough to completely screen the equipment.
- K. Safe Building Elements: Every foundation, roof, floor, exterior and interior wall, ceilings, inside and outside stair, every porch and balcony, and every appurtenance thereto, shall be safe to use and capable of supporting loads required by the occupancy.
- L. Facilities to Function: Every supplied facility, piece of equipment or utility required under city ordinances and every chimney and flue shall be installed and maintained and shall function effectively in a safe, sound, and working condition.
- M. Discontinuance of Service or Facilities: No owner, operator, or occupant shall cause any service, facility, equipment, or utility, which is required under this chapter, to be removed, shut off or discontinued from any occupied building or portion thereof, except for such temporary interruptions as may be necessary while actual repairs or alterations are in process, or during temporary emergencies.

7-11-9: MINIMUM STANDARDS FOR BASIC EQUIPMENT AND FACILITIES: No person shall occupy, as owner/occupant, or let to another occupy, any rental building or rental dwelling unit for the purposes of living, sleeping, cooking and eating therein which do not comply with the following requirements:

A. Kitchen Facilities:

1. Every dwelling unit shall have a room or portion of a room in which food may be prepared and/or cooked and which is connected to an approved sewer system.
2. Every dwelling unit shall have an approved kitchen sink in good working condition and properly connected to an approved water supply system, and which provides at all times an adequate amount of heated and unheated running water under pressure, and which is connected to an approved sewer system.
3. Every dwelling unit shall have cabinets and/or shelves for the storage of eating, drinking, and cooking equipment and utensils and of food that does not require refrigeration for safekeeping, and a counter or table for food preparation. Said cabinets and/or shelves and counter or table shall be adequate for the permissible occupancy of the dwelling unit and shall be of sound construction and furnished with surfaces that are easily cleaned and that will not impart any toxic or deleterious effect to food.
4. Every dwelling unit shall have a stove or similar device for cooking food, and a refrigerator or similar device for the safe storage of food at or below forty degrees Fahrenheit (40°F), which are properly installed with all necessary connections for safe, sanitary and efficient operation. Provided, that such stove, refrigerator or similar device need not be installed when a dwelling unit is not occupied or when the occupant is expected to provide same upon occupancy, in which case, sufficient space and adequate connections for the installation and operation of said stove, refrigerator or similar device must be provided.

B. Toilet Facilities: Within every rental dwelling unit there shall be an uninhabitable room which is equipped with an approved toilet in good working condition. Such room shall have an entrance door which affords privacy. Said toilet shall be equipped with easily cleaned surfaces, shall be connected to an approved water system that at all times provides an adequate amount of running water under pressure to cause the toilet to be operated properly, and shall be connected to an approved sewer system.

C. Lavatory Sink: Within every rental dwelling unit there shall be an approved lavatory sink. Said lavatory sink may be in the same room as the flush water closet, or if located in another room, the lavatory sink shall be located in close proximity to the door leading directly into the room in which the said water closet is located. The lavatory sink shall be in good working condition and shall be properly connected to an approved water supply system and shall provide at all times an adequate amount of heated and unheated running water under pressure, and shall be connected to an approved sewer system.

- D. **Bathtub or Shower:** Within every rental dwelling unit there shall be an uninhabitable room which is equipped with an approved bathtub or shower in good working condition. Such room shall have an entrance which affords privacy. Said bathtub or shower may be in the same room as the flush water closet, or in another room, and shall be properly connected to an approved water supply system and shall provide at all times an adequate amount of heated and unheated water under pressure, and shall be connected to an approved sewer system.
- E. **Stairways, Porches and Balconies:** Every stairway inside or outside of a rental dwelling and every porch or balcony shall be kept in safe condition and sound repair. Stairs, handrails and guards shall conform to the IRC/IBC.
- F. **Access to Rental Dwelling Unit:** Access to or egress from each rental dwelling unit shall be provided without passing through any other rental dwelling unit.
- G. **Door Locks:** No owner shall occupy nor let to another for occupancy any rental dwelling or rental dwelling unit unless all exterior doors of the dwelling or dwelling unit are equipped with safe, functioning locking devices as follows:
 - 1. **Building Entrances:** For the purpose of providing a reasonable amount of safety and general welfare for persons occupying multiple-family dwellings, an approved security system shall be maintained for each multiple-family building to control access. The security system shall consist of locked building entrance or foyer doors, and locked doors leading from hallways into individual dwelling units. Dead-latch type doors shall be provided with lever knobs (or doorknobs) on the inside of building entrance doors and with key cylinders on the outside of building entrance doors. Building entrance door latches shall be of a type that are permanently locked from the outside and permanently locked from the inside.
 - 2. **Interior Dwelling Unit Entrances:** Every door that is designed to provide ingress or egress for a dwelling unit within a multiple-family building shall be equipped with an approved lock that has a deadlocking bolt that cannot be retracted by end pressure; provided, however, that such door shall be openable from the inside without the use of a key or any special knowledge or effort.

7-11-10: MINIMUM STANDARDS FOR LIGHT AND VENTILATION: No person shall occupy, as owner/occupant, or let to another occupy, any rental building or rental dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- A. Habitable Room Light and Ventilation: Except where there is supplied some other device affording adequate ventilation and approved by the compliance official, every habitable room shall have at least one window facing directly outdoors which can be opened easily. The minimum total of openable window area in every habitable room shall be the greater of ten percent (10%) of the floor area of the room or ten (10) square feet. One-half (1/2) of the required window area shall be openable.
- B. Uninhabitable Room Ventilation: Every bathroom and water closet compartment, and every laundry and utility room shall contain at least fifty percent (50%) of the ventilation requirement for habitable rooms contained in subsection A of this section; except, that no windows shall be required if such rooms are equipped with a ventilation system which is approved by the compliance official.
- C. Electric Service, Outlets and Fixtures: Every rental dwelling unit and all public and common areas shall be supplied with electric service, functioning over current protection devices, electric outlets, and electric fixtures which are properly installed, which shall be maintained in good and safe working condition, and which shall be connected to a source of electric power in a manner prescribed by the ordinances, rules, and regulations of the City and by the laws of the State. The minimum capacity of such electric service and the minimum number of electric outlets and fixtures shall be as follows:
1. Rental dwellings containing one (1) or two (2) rental dwelling units shall have at least the equivalent of sixty (60) ampere, 3-wire electric service per dwelling unit.
 2. Rental dwelling units shall have at least one branch electric circuit for each six hundred (600) square feet of dwelling unit floor area.
 3. Every habitable room shall have at least one floor or wall type electric convenience outlet for each sixty (60) square feet or fraction thereof of total floor area and, in no case, less than two (2) such electric outlets; provided, however, that one ceiling or wall type fixture may be supplied in lieu of one required electric outlet.
 4. Every bathroom, kitchen, laundry room, and furnace room shall contain at least one (1) supplied ceiling or wall type electric light fixture, and every bathroom, kitchen, and laundry room shall contain at least one (1) electric convenience outlet.
 5. Every public corridor and stairway in every rental dwelling shall be adequately lighted by natural or electric light at all times so as to provide effective illumination in all parts thereof. Every public corridor and stairway in structures containing not more than two (2) dwelling units may be supplied with conveniently located light switches controlling an adequate

lighting system which may be turned on when needed, instead of full time lighting.

6. A convenient switch or equivalent device for turning on a light in each rental dwelling unit shall be located near the point of entrance to such unit.

D. Smoke and Carbon Dioxide Protection: (Ord. 2008-15, July 14, 2008)

1. Every rental dwelling unit shall have smoke detector devices as follows:
 - a. One (1) per level.
 - b. One (1) per bedroom.
 - c. One (1) per hallway leading to bedrooms.
2. Every level of every rental dwelling unit shall have a carbon monoxide detection device located within ten (10) feet of any bedrooms.

7-11-11: DWELLINGS UNFIT FOR HUMAN HABITATION:

- A. Any rental dwelling or rental dwelling unit which is damaged, decayed, dilapidated, unsanitary, unsafe, or vermin or rodent infested, or which lacks provision for basic illumination, ventilation or sanitary facilities to the extent that the defects create a hazard to the health, safety or welfare of the occupants or of the public may be declared unfit for human habitation. Whenever any rental dwelling, rental dwelling unit or rooming unit has been declared unfit for human habitation, the compliance official shall order the dwelling, dwelling unit or rooming unit vacated within a reasonable amount of time and shall post a placard on the dwelling, dwelling unit or rooming unit indicating that it is unfit for human habitation and any operating license previously issued for such dwelling shall be revoked.
- B. It shall be unlawful for such rental dwelling or rental dwelling unit to be used for human habitation until the defective conditions have been corrected and written approval has been issued by the compliance official. It shall be unlawful for any person to deface or remove the declaration placard from any such rental dwelling or rental dwelling unit.
- C. The owner of any rental dwelling or rental dwelling unit which has been declared unfit for human habitation, or which is otherwise vacant for a period of sixty (60) days or more, shall make the dwelling or dwelling unit safe and secure so that it is not hazardous to the health, safety and welfare of the public and does not constitute a public nuisance. Any vacant dwelling open at doors or windows, if unguarded, shall be deemed to be a hazard to the health, safety and welfare of the public and a public nuisance within the meaning of this ordinance.

- D. If a rental dwelling unit has been declared unfit for human habitation and the owner has not remedied the defects within a prescribed reasonable time, the dwelling may be declared a hazardous building and treated consistent with the provisions of State statutes.

7-11-12: PENALTIES AND VIOLATIONS: Any person who violates any provision of this Section shall be guilty of a misdemeanor, punishable as prescribed by State law. The City may elect alternative enforcement through civil penalties or through the City's administrative enforcement proceedings as authorized in Chapter 2, Section 5 of the City Code.

Every license issued under the provisions of this Section is subject to suspension or revocation by the City should the licensed owner or the owner's duly authorized agent fail to operate or maintain a licensed dwelling or unit therein consistent with the provisions of the ordinances of the City and the Laws of the State. The City shall appoint a person responsible for administration of this section who shall have the authority to investigate licensees and to suspend or revoke licenses. The procedures for appealing a revocation or suspension of a license shall follow the City's administrative enforcement proceedings as authorized by Chapter 2, Section 5 of the City Code.

SECTION 12

LAWFUL GAMBLING

Section:

7-12-1	Adoption of State Law By Reference
7-12-2	City May Be More Restrictive Than State Law
7-12-3	Purpose
7-12-4	Definitions
7-12-5	Applicability
7-12-6	Lawful Gambling Permitted
7-12-7	Council Approval
7-12-8	Application
7-12-9	Local Permits
7-12-10	Revocation and Suspension of Local Permit
7-12-11	License and Permit Display
7-12-12	Notification of Material Changes to Application
7-12-13	Contribution of Net Profits to Fund Administered by City
7-12-14	Designated Trade Area
7-12-15	Records and Reporting
7-12-16	Hours of Operation
7-12-17	Penalty
7-12-18	Severability
7-12-19	Effective Date

7-12-1: ADOPTION OF STATE LAW BY REFERENCE: The provisions of Minnesota Statutes, Chapter 349, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, provisions relating to sales, and all other matters pertaining to lawful gambling are hereby adopted by reference and are made a part of this ordinance as if set out in full. It is the intention of the Council that all future amendments of Minnesota Statutes, Chapter 349, are hereby adopted by reference or referenced as if they had been in existence at the time this ordinance was adopted. (Ord. 2007-19, Nov. 13, 2007)

7-12-2: CITY MAY BE MORE RESTRICTIVE THAN STATE LAW: The Council is authorized by the provisions of Minnesota Statutes, Section 349.213, as it may be amended from time to time, to impose, and has imposed in this ordinance, additional restrictions on gambling within its limits beyond those contained in Minnesota Statutes, Chapter 349, as it may be amended from time to time. (Ord. 2007-19, Nov. 13, 2007)

7-12-3: PURPOSE: The purpose of this ordinance is to regulate lawful gambling within the City of Otsego, to prevent its commercialization, to insure the integrity of

operations, and to provide for the use of net profits only for lawful purposes. (Ord. 2007-19, Nov. 13, 2007)

7-12-4: DEFINITIONS: In addition to the definitions contained in Minnesota Statutes, Section 349.12, as it may be amended from time to time, the following terms are defined for purposes of this ordinance:

Board: The State of Minnesota Gambling Control Board.

City: The City of Otsego.

Council: The City Council of the City of Otsego.

Licensed Organization: An organization licensed by the Board.

Local Permit: A permit issued by the City. (Ord. 2007-19, Nov. 13, 2007)

Trade Area: The City of Otsego, City of Albertville, City of Rogers, City of Monticello and Monticello Township. (Ordinance 2012-04, adopted March 26, 2012)

7-12-5: APPLICABILITY: This ordinance shall be construed to regulate all forms of lawful gambling within the City except:

- A. Bingo conducted within a nursing home or a senior citizen housing project or by a senior citizen organization if the prizes for a single bingo game do not exceed \$10, total prizes awarded at a single bingo occasion do not exceed \$200, no more than two bingo occasions are held by the organization or at the facility each week, only members of the organization or residents of the nursing home or housing project are allowed to play in a bingo game, no compensation is paid for any persons who conduct the bingo, and a manager is appointed to supervise the bingo.
- B. Raffles if the value of all prizes awarded by the organization in a calendar year does not exceed \$1,500. (Ord. 2007-19, Nov. 13, 2007)

7-12-6: LAWFUL GAMBLING PERMITTED: Lawful gambling is permitted within the City provided it is conducted in accordance with Minnesota Statutes, Sections 609.75-609.763, inclusive, as they may be amended from time to time; Minnesota Statutes, Sections 349.11-349.23, inclusive, as they may be amended from time to time; and this ordinance. (Ord. 2007-19, Nov. 13, 2007)

7-12-7: COUNCIL APPROVAL: Lawful gambling authorized by Minnesota Statutes, Sections 349.11-349.23, inclusive, as they may be amended from time to time, shall not be conducted unless approved by the Council, subject to the provisions of this ordinance and state law. (Ord. 2007-19, Nov. 13, 2007)

7-12-8: APPLICATION AND LOCAL APPROVAL OF PREMISES PERMITS

- A. Any organization seeking to obtain a premises permit or renewal of a premises permit from the Board shall file with the City Clerk an executed, complete duplicate application, together with all exhibits and documents accompanying the application as will be filed with the Board as well as an application form as prescribed by the City and the following information:
1. Name and address of the organization requesting the permit.
 2. Name and address of the officers and person accounting for receipts, expenses, and profits for the event.
 3. Dates of gambling occasion for which permit is requested.
 4. Address of premises where event will occur.
 5. Copy of rental or leasing arrangement, if any, connected with the event including rental to be charge to organization.
 6. Estimated value of prizes to be awarded. (Ordinance 2012-09, adopted August 13, 2012)
- B. Upon receipt of an application for issuance or renewal of a premises permit, the City Clerk shall transmit the application to the County Sheriff for review and recommendation.
- C. The County Sheriff shall investigate the matter and make the review and recommendation to the City Council as soon as possible, but in no event later than 45 days following receipt of the notification by the City. (Ord. 2007-19, Nov. 13, 2007)
- D. The applicant shall pay a fee at the time of application for a local premises permit as established by Section 2-4-2.B of the City Code for the City Clerk to accept the application. (Ordinance 2012-09, adopted August 13, 2012)
- E. The applicant shall be notified in writing of the date on which the City Council will consider the recommendation.

- F. The City Council shall receive the Police Chief's report and consider the application within 45 days of the date the application was submitted to the City Clerk.
- G. The City Council shall, by resolution, approve or disapprove the application within 60 days of receipt of the application. (Ord. 2007-19, Nov. 13, 2007)
- H. The City Council shall only approve an application for issuance or renewal of a premises permit if all of the requirements of Section 7-12-9 of this Chapter are complied with. (Ordinance 2012-09, adopted August 13, 2012)

7-12-9: REQUIREMENTS FOR LOCAL PERMITS:

- A. No organization shall conduct lawful gambling excluded or exempted from state licensure requirements by Minnesota Statute, Section 349.166, as it may be amended from time to time, without a valid local permit. This section shall not apply to lawful gambling exempted from local regulation by Section 7-12-5 of this Ordinance.
- B. Approval of a premises permit under this Section shall be subject to compliance with the following requirements:
 - 1. The gambling organization shall not have been found to have violated any State Statute, State Rule, or City Code relating to gambling within the last 3 years.
 - 2. The establishment for which the premises permit is to be issued or the organization leasing the premises for gambling shall not have been found to have violated any State Statute, State Rule, or City Code relating to the operation of the establishment, including, but not limited to, laws relating to the operation of the establishment, laws relating to alcoholic beverages, gambling, controlled substances, suppression of vice and protection of public safety within the last three years.
 - 3. The gambling organization has been in existence in the trade area for at least three consecutive years prior to the date of application.
 - 4. The gambling organization shall have at least fifteen (15) active members.
 - 5. Lawful gambling subject to the requirements of this Section shall be limited will not take place at a premises the gambling organization owns or rents.
 - 6. Lawful gambling subject to the requirements of this Section shall be limited to premises for which an on-sale liquor license has been issued.

7. Not more than one (1) gambling organization licensed to conduct lawful gambling activities subject to the requirements of this Section shall conduct lawful gambling at at any one premises.
- C. Local premises permits shall be valid for one year after the date of issuance unless suspended or revoked. (Ordinance 2012-09, adopted August 13, 2012)

7-12-10: REVOCATION AND SUSPENSION OF LOCAL PERMIT:

- A. A local permit may be revoked, or temporarily suspended for a violation by the gambling organization of any state statute, state rule, or City ordinance relating to gambling.
- B. A license shall not be revoked or suspended until notice and an opportunity for a hearing have first been given to the permitted person. The notice shall be sent by certified mail and shall state the provision reasonably believed to be violated. The notice shall also state that the permitted person may demand a hearing on the matter, in which case the permit will not be suspended until after the hearing is held. If the permitted person requests a hearing, the Council shall hold a hearing on the matter at least one week after the date on which the request is made. If, as a result of the hearing, the Council finds that an ordinance violation exists, then the Council may suspend or revoke the permit. (Ord. 2007-19, Nov. 13, 2007)

7-12-11: LICENSE AND PERMIT DISPLAY: All permits issued under state law or this ordinance shall be prominently displayed during the permit year at the premises where gambling is conducted. (Ord. 2007-19, Nov. 13, 2007)

7-12-12: NOTIFICATION OF MATERIAL CHANGES TO APPLICATION: An organization holding a state issued premises permit or a local permit shall notify the City within 10 days in writing whenever any material change is made in the information submitted on the application. (Ord. 2007-19, Nov. 13, 2007)

7-12-13: CONTRIBUTION OF NET PROFITS TO FUND ADMINISTERED BY CITY:

- A. Each organization licensed to conduct lawful gambling within the City pursuant to Minnesota Statute, Section 349.16, as it may be amended from time to time, shall contribute ten (10) percent of its net profits derived from lawful gambling in the City to a fund administered and regulated by the City without cost to the fund.

- B. Payment required by Section 7-12-13.A of this Section shall be made ~~on~~ within thirty (30) days of the end of each quarter of the year.
- C. The City shall disburse the funds for lawful purposes as defined by Minnesota Statutes Section 349.12, Subdivision 25, as it may be amended from time to time.
- D. The City's use of such funds collected pursuant to Section 7-12-13.A of this Section shall be determined resolution of the City Council. (Ordinance 2012-04, adopted March 26, 2012)

7-12-14: DESIGNATED TRADE AREA:

- A. Each organization licensed to conduct gambling within the City shall expend 100 percent of its lawful purpose expenditures on lawful purposes conducted within the City's trade area.
- B. This section applies only to lawful purpose expenditures of gross profits derived from gambling conducted at a premise within the City's jurisdiction. (Ord. 2007-19, Nov. 13, 2007)

7-12-15: RECORDS AND REPORTING:

- A. Organizations conducting lawful gambling shall file with the City Clerk one copy of all records and reports required to be filed with the Board, pursuant to Minnesota Statutes, Chapter 349, as it may be amended from time to time, and rules adopted pursuant thereto, as they may be amended from time to time. The records and reports shall be filed on or before the day they are required to be filed with the Board.
- B. Organizations licensed by the Board shall file a report with the City proving compliance with the trade area spending requirements imposed by Section 16. Such report shall be made on a form prescribed by the City and shall be submitted annually and in advance of application for renewal. (Ord. 2007-19, Nov. 13, 2007)

7-12-16: HOURS OF OPERATION: Lawful gambling shall not be conducted between 2:00 a.m. and 8:00 a.m. on any day of the week. (Ord. 2007-19, Nov. 13, 2007)

7-12-17: PENALTY: Any person who violates any provision of this ordinance; Minnesota Statutes, Sections 609.75-609.763, inclusive, as they may be amended from

time to time; or Minnesota Statutes, Sections 349.11-349.21, as they may be amended from time to time or any rules promulgated under those sections, as they may be amended from time to time shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000 or imprisonment for a term not to exceed 90 days, or both, plus in either case the costs of prosecution. In addition, violations shall be reported to the Board and recommendation shall be made for suspension, revocation, or cancellation of an organization's license. (Ord. 2007-19, Nov. 13, 2007)

7-12-18: SEVERABILITY: If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected. (Ord. 2007-19, Nov. 13, 2007)

7-12-19: EFFECTIVE DATE: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minnesota Statute, Section 412.191, Subdivision 4, as it may be amended from time to time, which meets the requirements of Minnesota Statute Section 331A.01, Subdivision 10, as it may be amended from time to time. (Ord. 2007-19, Nov. 13, 2007)

SECTION 13

PAWN AND SECOND HAND GOODS BUSINESSES

Section:

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7-13-1: PURPOSE:

1. The City Council finds that use of services provided by pawnbrokers provides an opportunity for the commission of crimes and their concealment because pawn businesses have the ability to receive and transfer property stolen by others easily and quickly. The City Council also finds that consumer protection regulation is warranted in transactions involving pawnbrokers. The City Council further finds that the pawn industry has outgrown the City's current ability to effectively or efficiently identify criminal activity related to pawn shops.
2. The purpose of this chapter is to prevent pawn businesses from being used as facilities for the commission of crimes, and to assure that such businesses comply with basic consumer protection standards, thereby protecting the public health, safety, and general welfare of the citizens of the City. This chapter also

establishes the required use of the automated pawn system (APS) to allow the Sheriff's Department better regulate current and future pawn businesses, decrease and stabilize costs associated with the regulation of the pawn industry, and increase identification of criminal activities in the pawn industry through the timely collection and sharing of pawn transaction information. (Ord. 09-04, April 27, 2009)

7-13-2: DEFINITIONS: When used in this Section, the following words shall mean:

Billable Transaction. Every reportable transaction conducted by a pawnbroker except renewals, redemptions or extensions of existing pawns on items previously reported and continuously in the licensee's possession is a billable transaction.

Licensing Authority. The City of Otsego.

Licensee. The person, partnership, association or corporation to who a license is issued under this Section, including any agents or employees of the person, partnership, association or corporation.

Minor. Any person under eighteen (18) years of age.

Pawnbroker. Any natural person, partnership or corporation, either as principal, or agent or employee thereof, who loans money on deposit or pledge of personal property, or other valuable thing, or who deals in the purchasing of personal property, or other valuable thing on condition of selling the same back again at a stipulated price, or who loans money secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged. To the extent that a pawnbroker's business includes buying personal property previously used, rented or leased, or selling it on consignment, the provisions of this chapter shall be applicable.

Pawnshop. The location at which or premises in which a pawnbroker regularly conducts business.

Person. An individual; a partnership, including a limited partnership; a corporation including a foreign, domestic or nonprofit corporation; a trust; a political subdivision of the state; or any other business organization.

Precious Metal Dealer. Any person engaged in the business of buying coins or second hand items containing precious metal, including but not limited to, jewelry, watches, eating utensils, candlesticks, and religious and decorative objects.

Reportable Transaction. Every transaction conducted by a pawnbroker in which merchandise is received through a pawn, purchase, consignment or trade, or in which a

pawn is renewed, extended or redeemed, or for which a unique transaction number or identifier is generated by their point-of-sale software, is reportable except:

- A. The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer or wholesaler having an established permanent place of business, and the retail sale of said merchandise, provided the pawnbroker must maintain a record of such purchase or consignment which describes each item, and must mark each item in a manner which relates it to that transaction record.
- B. Retail and wholesale sales of merchandise originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.

Second Hand Dealer. A person, partnership, firm or corporation whose regular business includes selling or receiving tangible personal property (excluding motor vehicles) previously used, rented, owned, or leased. The term second hand dealer shall include pawnbroker and antique shops.

Sheriff's Department. The Wright County Sheriff's Department. (Ord. 09-04, April 27, 2009)

7-13-3: STATUTORY AUTHORITY: This Section is adopted pursuant to the authorization provided for by Minnesota Statutes § 325J.02. (Ord. 09-04, April 27, 2009)

7-13-4: LICENSE REQUIRED:

- A. No person shall engage in the business of pawnbroker at any location without a pawnbroker license for that location. No pawnbroker license may be transferred to a different location or a different person; Any change, directly or beneficially, in the ownership of any licensed pawnshop shall require the application for a new license and the new owner must satisfy all current eligibility requirements. Issuance of a license under this Section shall not relieve the licensee from obtaining any other licenses required to conduct business at the same or any other location.
- B. All licenses issued under this Section shall be effective from the date of approval by the City Council and shall expire on December 31 of each year.
- C. A license issued under this Section shall be posted in a conspicuous place within the licensed premises.
- D. A licensee under this Section shall be responsible for the conduct of the business being operated and shall maintain conditions of order. The conduct of agents or

employees of a licensee engaged in the performance of duties for the licensee shall be deemed the conduct of the licensee.

- E. It shall be unlawful for any person who owns or controls real property to knowingly permit it to be used for pawn brokering without a license required by this Section. (Ord. 09-04, April 27, 2009)

7-13-5: EXCEPTIONS TO LICENSE REQUIREMENT:

- A. The following transactions involving precious metal shall not require a license under this Section:
1. Transactions at occasional "garage" or "yard" sales, or estate sales or auctions held at the decedent's residence, except that precious metal dealers must comply with the requirements of Minnesota Statutes § 325F.73 to 325F.744 for these transactions.
 2. Transactions regulated by Minnesota Statutes § 80A.
 3. Transactions regulated by the Federal Commodity Futures Commission Act.
 4. Transactions involving the purchase of precious metal grindings, filings, slag, sweeps, scraps or dust from an industrial manufacturer, dental lab, dentist or agent thereof.
 5. Transactions involving the purchase of photographic film such as lithographic and x-ray film or silver residue or flake covered in lithographic and x-ray film processing.
 6. Transactions involving coins or bullion in ingots.
 7. Transactions in which the second hand item containing precious metal is exchanged for a new item containing precious metal and the value of the new item exceeds the value of the second hand item.
 8. Transactions between precious metal dealers if both dealers are licensed under Minnesota Statutes § 325F.733, or if the seller's business is located outside of the state and the item is shipped from outside the state to a dealer licensed under Minnesota Statutes § 325F.733.
 9. Resale transactions by an antique dealer of second hand items containing precious metal if the items are resold at retail in an unaltered condition except for repair, and the antique dealer paid less than two thousand five hundred dollars (\$2,500.00) for all second hand items containing precious

metals purchased by said antique dealer within any twelve (12) consecutive month period.

- B. The following transactions involving second hand goods shall not require a license under this section:
1. The sale of second hand goods where all of the following are present:
 - a. The sale is held on property occupied as a residential dwelling by the seller or owned, rented or leased by a charitable or political organization.
 - b. The items offered for sale are owned by the occupant.
 - c. That no sale exceeds a period of seventy-two (72) consecutive hours.
 - d. That no more than two sales are held in any twelve (12) consecutive month period at any residential dwelling.
 - e. That none of the items offered for sale have been purchased for resale or received on consignment for purpose of resale.
 2. The sale of goods at an auction held by a licensed auctioneer.
 3. The sale of recyclable material including, but not limited to, motor oil, aluminum, iron, glass, plastic and paper.
 4. Private occasional sales of second hand goods.
 5. The sale of used motor vehicles.
 6. The sale of any item for less than fifteen dollars (\$15.00) in cash, merchandise or services for merchandise received provided:
 - a. The total amount paid any single person for resold merchandise does not exceed forty-five dollars (\$45.00) within any sixty (60) day period; or
 - b. Merchandise has not been received for resale from any single person more than three times within any sixty (60) day period regardless of the total value of said transactions.
 7. The business of buying or selling only those second hand goods taken as part of full payment for new goods of greater value and where such business is incidental to and not the primary business of a person.

8. Goods sold at an exhibition.
9. The business of buying, selling or consigning second hand goods such as clothing, shoes, housewares, household goods, décor and/or furniture, but excluding electronic devices or precious metals unless exempt by Section 7-13-5.A of this Section, either as incidental to or as the primary business activity. (Ordinance 2013-13, adopted May 28, 2013)

7-13-6: PERSONS INELIGIBLE FOR A LICENSE: No license under this chapter will be issued to an applicant who is a natural person, a partnership if such applicant has any general partner or managing partner, a corporation or other organization if such applicant has any manager, proprietor or agent in charge of the business to be licensed, if the applicant:

- A. Is a minor at the time that the application is filed;
- B. Has been convicted of any crime directly related to the occupation licensed as prescribed by Minnesota Statutes § 364.03, Subd. 2, and has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensee under this chapter as prescribed by Minnesota Statutes, § 364.03, Subd. 3; (Ord. 09-04, April 27, 2009)

7-13-7: BUSINESS AT ONLY ONE PLACE:

- A. A license under this Section authorizes the licensee to carry on its business only at the permanent place of business designated in the license.
- B. Upon written request, the Sheriff's Department may approve an offsite locked and secured storage facility provided that:
 1. The licensee shall permit inspection of the facility in accordance with Section 7-13-16 of the City Code.
 2. All provisions of this Section regarding record keeping and reporting apply to the facility and its contents.
- C. Property shall be stored in compliance with all provisions of the City Code.
- D. The licensee must either own the building in which the business is conducted, and any approved off-site storage facility, or have a lease on the business premise that extends for more than six (6) months.

- E. If a license application is approved for a location where a building is under construction or otherwise not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises. (Ord. 09-04, April 27, 2009)

7-13-8: LICENSE FEES:

- A. The annual fees for licenses issued under this Section shall be as set forth in Section 2-4-2.A.6 of the City Code.
- B. The billable transaction license fee shall reflect the cost of processing transactions and other related regulatory expenses as set forth in Section 2-3-2.A.6 of the City Code and shall be billed monthly and are due and payable within thirty (30) days; failure to pay the billable transaction license fees within thirty (30) days shall be a violation of this Section. (Ord. 09-04, April 27, 2009)

7-13-9: LICENSE APPLICATION:

- A. An application form provided by the City Clerk must be completed by every applicant for a new license or for renewal of an existing license. Every new applicant must provide all the following information:
 - 1. If the applicant is a natural person:
 - a. The name, place and date of birth, street resident address, and phone number of applicant.
 - b. Whether the applicant is a citizen of the United States or resident alien.
 - c. Whether the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places used.
 - d. The name of the business if it is to be conducted under a designation, name, or style other than the name of the applicant and a certified copy of the certificate as required by Minnesota Statutes § 333.01.
 - e. The street address at which the applicant has lived during the preceding five (5) years.

- f. The type, name and location of every business or occupation in which the applicant has been engaged during the preceding five (5) years and the name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding five (5) years.
 - g. Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, the applicant must furnish information as to the time, place, and offense of all such convictions.
 - h. If the applicant does not manage the business, the name of the manager(s) or other person(s) in charge of the business and all information concerning each of them required in Section 7-13-9.A.1.a. through g. of this Section.
2. If the applicant is a partnership:
- a. The name(s) and address(es) of all general and limited partners and all information concerning each general partner required in subdivision (1) of this section.
 - b. The name(s) of the managing partner(s) and the interest of each partner in the licensed business.
 - c. A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to Minnesota Statutes § 333.01, a certified copy of such certificate must be attached to the application.
3. If the applicant is a corporation or other organization:
- a. The name of the corporation or business form, and if incorporated, the state of incorporation.
 - b. A true copy of the Certificate of Incorporation, Articles of Incorporation or Association Agreement and By-laws shall be attached to the application. If the applicant is a foreign corporation, a Certificate of Authority as required by Minnesota Statutes § 303.06 must be attached.
 - c. The name of the manager(s) or other person(s) in charge of the business and all information concerning each manager, proprietor, or agent required in a. through g. of subdivision 1 of this section.
4. For all applicants:

- a. Whether the applicant holds a current pawnbroker, precious metal dealer or secondhand goods dealer license from any other governmental unit and whether the applicant is licensed under Minnesota Statutes § 471.924.
 - b. Whether the applicant has previously been denied, or had revoked or suspended, a pawnbroker precious metal dealer, or secondhand dealer license from any other governmental unit.
 - c. The location of the business premises.
 - d. The legal description of the premises to be licensed.
 - e. A true and complete copy of an executed lease for the premises to be licensed if the applicant does not own the property.
 - f. Certification that all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid.
 - g. Whenever the application is for a premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed.
 - h. A description of the proposed hours of operation and on-site management.
 - i. A site plan of the premises to be licensed showing the location of off-street parking facilities compliant with the requirements of the Zoning Ordinance.
 - j. An executed data practices advisory and consent form authorizing the release of criminal history information.
 - k. Such other information as the licensing authority may require.
- B. All applications for a license under this Section must be signed and sworn to under oath or affirmation by the applicant. If the application is that of a natural person, it must be signed and sworn to by such person; if that of a corporation, by an officer thereof; if that of a partnership, by one of the general partners; and if that of an unincorporated association, by the manager or managing officer thereof. Any falsification on a license application shall result in the denial of a license.
- C. All applications shall be referred to the Sheriff's Department for verification and investigation of the facts set forth in the application. Within sixty (60) days after

receipt of an application, the Sheriff's Department shall make a written report and recommendation to the City Council as to the issuance or non-issuance of the license. The City Council may order and conduct such additional investigation as it deems necessary. If additional investigation is necessary, the applicant shall pay the City the for all costs incurred in the course of the additional investigation.

- D. The City Council shall conduct a public hearing on the license application within thirty (30) days following receipt of the Sheriff's Department's report and recommendation regarding the application:
1. The City Clerk shall publish notice at least ten (10) days in advance of the public hearing in the official City newspaper setting forth the day, time and place of the hearing; the name of the applicant; the premises where the business is to be conducted; and the type of license being sought.
 2. The public hearing shall also be preceded by ten (10) days mailed notice to all property owners located within five hundred (500) feet of the boundaries of the property where the business is to be conducted.
 3. The applicant shall be present at the public hearing.
 4. Opportunity shall be given to any person to be heard for or against the granting of the license.
 5. Approval of a license under this Section shall require a majority vote of the City Council.
- E. An application for renewal of an existing license shall be made prior to the expiration date of the license in the form required by and processed in accordance with Sections 7-13-9.A through 7-13-9.D of the City Code.
- F. Manager/New Manager:
1. When a licensee designates a manager in charge of a business, or the named manager(s) in charge of a licensed business changes, the licensee must complete and submit the appropriate application prior to the effective date of the change. The new manager shall be subject to the investigation required by this Section.
 2. The designation of a new manager shall not cause an existing license issued under this Section to become invalid before a decision is rendered, provide that proper notice and application are made by the licensee.
 3. A proposed new manager shall be referred to as the interim manager.

4. In the event that an interim manager is denied, the licensee shall designate another interim manager and make the required application within fifteen (15) days of the decision.
5. If a proposed manager is denied, the decision may be appealed to the City Council by filing a written notice of appeal with the City Clerk within fifteen (15) days after being notified of the denial. (Ord. 09-04, April 27, 2009)

7-13-10: BOND REQUIRED: Before a license will be issued, every applicant must submit a five thousand dollar (\$5,000.00) bond on the forms provided by the City Clerk. All bonds must be conditioned that the principal will observe all laws in relation to pawnbrokers, and will conduct business in conformity thereto, and that the principal will account for and deliver to any person legally entitled any goods which have come into the principal's hand through the principal's business as a pawnbroker, or in lieu thereof, will pay the reasonable value in money to the person. The bond shall contain a provision that no bond may be canceled except upon thirty (30) days written notice to the City. (Ord. 09-04, April 27, 2009)

7-13-11: RECORDS REQUIRED: At the time of any reportable transaction other than renewals, extensions or redemptions, every licensee must immediately record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the Sheriff's Department.

- A. A complete and accurate description of each item including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying mark on such an item.
- B. The purchase price, amount of money loaned upon, or pledged therefore.
- C. The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges.
- D. Date, time and place the item of property was received by the licensee, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records.
- E. Full name, current residence address, current residence telephone number, date of birth and accurate description of the person from whom the item of property was received, including: sex, height, weight, race, color of eyes and color of hair.
- F. The identification number and state of issue from any of the following forms of identification of the seller:
 - a. Current valid Minnesota driver's license.

- b. Current valid Minnesota identification card.
 - c. Current valid photo identification card issued by another state or province of Canada.
- G. The signature of the person identified in the transaction.
- H. Effective sixty (60) days from the date of notification by the Sheriff's Department of acceptable video standards the licensee must also take a color photograph or color video recording of:
- a. Each customer involved in a billable transaction.
 - b. Every item pawned or sold that does not have a unique serial or identification number permanently engraved or affixed. If a photograph is taken, it must be at least two (2) inches in length by two (2) inches in width and must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which they relate. Such photographs must be available to the Sheriff's Department upon request. The major portion of the photograph must include an identifiable front facial close-up of the person who pawned or sold the item. Items photographed must be accurately depicted. The licensee must inform the person that he or she is being photographed by displaying a sign of sufficient size in a conspicuous place in the premises. If a video photograph is taken, the video camera must zoom in on the person pawning or selling the item so as to include an identifiable close-up of that person's face. Items photographed by video must be accurately depicted. Video photographs must be electronically referenced by time and date so they can be readily matched and correlated with all other records of the transaction to which they relate. The licensee must inform the person orally that he or she is being videotaped and by displaying a sign of sufficient size in a conspicuous place on the premises. The licensee must keep the exposed videotape for three (3) months.
- I. Effective sixty (60) days from the date of notification by the Sheriff's Department licensees must fulfill the color photograph requirements in Section 7-13-11.H of the City Code by submitting them as digital images, in a format specified by the Licensing authority, electronically cross-referenced to the reportable transaction they are associated with. Notwithstanding the digital images may be captured from required video recordings, this provision does not alter or amend the requirements in Section 7-13-11.H of the City Code.
- J. For renewals, extensions and redemptions, the licensee shall provide the original transaction identifier, the date of the current transaction and the type of transaction.

- K. The records must at all reasonable times be open to inspection by the Sheriff's Department or Department of Licenses and Consumer Services. Data entries shall be retained for at least three (3) years from the date of transaction. Entries of required digital images shall be retained a minimum of ninety (90) days. (Ord. 09-04, April 27, 2009)

7-13-12: DAILY REPORTS TO SHERIFF'S DEPARTMENT.

- A. Effective no later than sixty (60) days after the Sheriff's Department provides licensees with computerized record standards, licensees must submit every reportable transaction to the Sheriff's Department daily in the following manner:
1. Licensees must provide to the Sheriff's Department all information required in Section 7-13-11 and other required information by transferring it from their computer to the Automated Pawn system via modem.
 2. All required records must be transmitted completely and accurately after the close of business each day in accordance with standards and procedures established by the Licensing authority.
 3. If a licensee is unable to successfully transfer the required reports by modem, the licensee must provide the Sheriff's Department printed copies of all reportable transactions along with the video tape(s) for that date by 12:00 the next business day.
 4. If the problem is determined to be in the licensee's system and is not corrected by the close of the first business day following the failure, the licensee must provide the required reports as detailed in Section 7-13-11 and shall be charged a daily reporting penalty as set forth by Section 2-4-2.A.6 of the City Code, daily, until the error is corrected, or:
 5. If the problem is determined to be outside the licensee's system, the licensee must provide the required reports in Section 7-13-11 and resubmit all such transactions via modem when the error is corrected.
 6. If a licensee is unable to capture, digitize or transmit the photographs required in Section 7-13-11.I, the licensee must immediately take all required photographs with a still camera, cross-reference the photographs to the correct transaction, and make the pictures available to the Sheriff's Department upon request.
 7. Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction

of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed.

8. Section 7-13-12.A.1 through 7 notwithstanding, the City Clerk may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.
- B. The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs all patrons that all transactions are reported to the Sheriff's Department daily.
- C. Licensees will be charged for each billable transaction reported to the Sheriff's Department. (Ord. 09-04, April 27, 2009)

7-13-13: RECEIPT REQUIRED: Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for three (3) years. The receipt must include at least the following information:

- A. The name, address and telephone number of the licensed business.
- B. The date and time the item was received by the licensee.
- C. Whether the item was pawned or sold or the nature of the transaction.
- D. An accurate description of each item received including, but not limited to, any trademark, identification number, serial number, model number, brand name or other identifying mark on such an item.
- E. The signature or unique identifier of the licensee or employee that conducted the transaction.
- F. The amount advanced or paid.
- G. The monthly and annual interest rates, including all pawn fees and charges.
- H. The last regular day of business by which the item must be redeemed by the pledger without risk that the item will be sold, and the amount necessary to redeem the pawned item on that date.
- I. The full name, current residence address, current residence telephone number and date of birth of the pledger or seller.
- J. The identification number and state of issue from any of the following forms of identification of the seller:

1. Current valid Minnesota driver's license.
 2. Current valid Minnesota identification card.
 3. Current valid photo driver's license or identification card issued by another state or province of Canada.
- K. Description of the pledger or seller including sex, approximate height, weight, race, color of eyes and color of hair.
- L. The signature of the pledger or seller.
- M. All printed statements as required by Minnesota Statute § 325J.04 subd 2, or any other applicable statutes. (Ord. 09-04, April 27, 2009)

7-13-13: REDEMPTION PERIOD:

- A. Any person pledging, pawning or depositing an item for security must have a minimum of one hundred twenty (120) days from the date of that transaction to redeem the item before it may be forfeited and sold.
- B. During the one hundred twenty (120) day holding period, items may not be removed from the licensed location except as provided in Section 7-13-7.B of the City Code.
- C. Licensees are prohibited from redeeming any item to anyone other than the person to whom the receipt was issued or, to any person identified in a written and notarized authorization to redeem the property identified in the receipt, or to a person identified in writing by the pledger at the time of the initial transaction and signed by the pledger, or with approval of the police license inspector. Written authorization for release of property to persons other than original pledger must be maintained along with original transaction record in accordance with Section 7-13-11 of the City Code. (Ord. 09-04, April 27, 2009)

7-13-14: HOLDING PERIOD: Any item purchased or accepted in trade by a licensee must not be sold or otherwise transferred for thirty (30) days from the date of the transaction. An individual may redeem an item seventy-two (72) hours after the item was received on deposit, excluding Sundays and legal holidays. (Ord. 09-04, April 27, 2009)

7-13-15: LAW ENFORCEMENT ORDER TO HOLD PROPERTY.

- A. Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency with seventy-two (72) hours and will remain in effect for fifteen (15) days from the date of initial notification or until the investigative order is canceled, or until an order to hold/confiscate is issued pursuant to Section 7-13-15.B or 7-13-15.C of the City Code, whichever comes first.
- B. Whenever the Sheriff's Department or other law enforcement official, notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the chief or the chief's designee. The order to hold shall expire ninety (90) days from the date it is placed unless the chief of police or the chief's designee determines the hold is still necessary and notifies the licensee in writing.
- C. If an item is identified as stolen or evidence in a criminal case, the Sheriff's Department or other law enforcement official may:
 - 1. Physically confiscate and remove it from the shop, pursuant to written order from the Sheriff's Department, or
 - 2. Place the item on hold or extend the hold as provided in Section 7-13-15.B of the City Code and leave it on the premises.
 - 3. When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator and the case number related to the confiscation.
- D. When an order to hold/confiscate is no longer necessary, the Sheriff's Department shall so notify the licensee. (Ord. 09-04, April 27, 2009)

7-13-16: INSPECTION OF ITEMS: At all times during the terms of the license, the licensee must allow law enforcement officials to enter the premises where the licensed business is located, including all off-site storage facilities as authorized in Section 7-13-7 of this Section, during normal business hours, except in an emergency for the purpose of inspecting such premises and inspecting the items, ware and merchandise and records therein to verify compliance with this chapter and other applicable laws. (Ord. 09-04, April 27, 2009)

7-13-17: LABEL REQUIRED: Licensee must attach a label to every item at the time it is pawned, purchased or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records, the transaction date, the name of the item and the description or the model and serial number of the item as reported to the

police department whichever is applicable and the date the item is out of pawn or can be sold, if applicable. Labels shall not be re-used. (Ord. 09-04, April 27, 2009)

7-13-18: PROHIBITED ACTS:

- A. No person under the age of eighteen (18) years may pawn or sell or attempt to pawn or sell goods with any licensee, nor may any licensee receive any goods from a person under the age of eighteen (18) years.
- B. No licensee may receive any goods from a person of unsound mind or an intoxicated person.
- C. No licensee may receive any goods, unless the seller presents identification in the form of a valid driver's license, a valid State of Minnesota identification card, or current valid photo driver's license or identification card issued by the state of residency of the person from whom the item was received.
- D. No licensee may receive any item of property that possesses an altered or obliterated serial number or operation identification number or any item of property that has had its serial number removed.
- E. No person may pawn, pledge, sell, consign, leave, or deposit any article of property not their own; nor shall any person pawn, pledge, sell, consign, leave, or deposit the property of another, whether with permission or without; nor shall any person pawn, pledge, sell, consign, leave, or deposit any article of property in which another person has a security interest; with any licensee.
- F. No person seeking to pawn, pledge, sell, consign, leave, or deposit any article of property with any licensee shall give a false or fictitious name, nor give a false date of birth; nor give a false or out of date address of residence or telephone number; nor present a false or altered identification, or the identification of another; to any licensee. (Ord. 09-04, April 27, 2009)

7-13-19: HOURS OF OPERATION: No licensee shall keep the pawnbroker business open for transaction of business on any day of the week before 8:00 AM or after 9:00 PM. (Ord. 09-04, April 27, 2009)

7-13-20: REQUIRED NOTICES: All licensees shall by adequate signage and separate written notice inform persons seeking to pawn, pledge, sell, leave or deposit articles of property with the licensee the forgoing requirements:

- A. For the purposes of this Section, "adequate signage" shall mean at least one (1) sign of not less than four (4) square feet in surface area, comprised of lettering of

not less than three-quarters (3/4) of an inch in height, posted in a conspicuous place on the licensed premises stating the following:

TO PAWN OR SELL PROPERTY:

YOU MUST BE AT LEAST 18 YEARS OF AGE; AND,

YOU MUST BE THE TRUE OWNER OF THE PROPERTY; AND,

YOU MUST PRESENT VALID PHOTO IDENTIFICATION; AND,

VIOLATION OF ANY OF THESE REQUIREMENTS IS A CRIME.

ALL TRANSACTIONS REPORTED DAILY TO LAW ENFORCEMENT

- B. For the purposes of this Section, "separate written notice" shall mean either the receipt as required by Section 7-13-13 of this Section or a printed form for incorporating a statement to the effect that a person pawning, pledging, selling, leaving or depositing the article is at least eighteen (18) years of age; is the true owner of the article; that the article is free of all claims and liens; and that all transactions are reported daily to law enforcement; which is acknowledged by way of the signature of the person pawning, pledging, selling, leaving or depositing the article. (Ord. 09-04, April 27, 2009)

7-13-21: DENIAL, SUSPENSION OR REVOCATION:

- A. Any license under this Section may be denied, suspended or revoked for one or more of the following reasons:
1. The proposed use does not comply with any applicable provision of the Zoning Ordinance.
 2. The proposed use does not comply with any health, building, building maintenance or other provisions of the City Code or State law.
 3. The applicant or licensee has failed to comply with one or more provisions of this Section.
 4. The applicant is not a citizen of the United States or a resident alien, or upon whom it is impractical or impossible to conduct a background or financial investigation due to the unavailability of information.
 5. Fraud, misrepresentation or bribery in securing or renewing a license.

6. Fraud, misrepresentation or false statements made in the application and investigation for, or in the course of, the applicant's business.
 7. Violation within the preceding five (5) years, of any law relating to theft, damage or trespass to property, sale of a controlled substance, or operation of a business.
 8. The owner of the premises licensed or to be licensed would not qualify for a license under the terms of this Section.
- B. The City Council may act to suspend or revoke a license for non-compliance with an applicable statute, regulation or ordinance. A licensee shall be given ten (10) days written notice of a penalty, suspension or revocation action stating the reasons for the suspension or revocation as well as the date, time and place at which the City Council will consider action. Opportunity to be heard with regards to the suspension or revocation of the license shall be given to the licensee if present when the City Council considers action. (Ord. 09-04, April 27, 2009)

7-13-22: PENALTY: A violation of any provision of this section shall be a misdemeanor. The Licensing Authority shall reserve the right to pursue any administrative, civil or criminal procedure available to it to abate a violation of this Section. (Ord. 09-04, April 27, 2009)

7-13-23: SEPARABILITY: Should any section, subsection, clause or other provision of this chapter be declared by a court of competent jurisdiction to be invalid such decision shall not affect the validity of the ordinance as a whole or any part other than the part so declared invalid. (Ord. 09-04, April 27, 2009)

SECTION 14

OUTDOOR ENTERTAINMENT

Section:

7-14-1	Purpose
7-14-2	Definitions
7-14-3	Permit Required
7-14-4	Application
7-14-5	Permit Term and Expiration
7-14-6	General Provisions
7-14-7	Enforcement

7-14-1: PURPOSE: The purpose of this Section is to establish regulations and administrative procedures for regulation of outdoor entertainment occurring at business locations within the City accessory to allowed principal uses to protect public health safety and welfare, maintain compatibility with surrounding land uses and minimize public nuisance concerns. (Ordinance 2014-07, Adopted April 14, 2014)

7-14-2: DEFINITIONS: The following terms are defined for the purpose of this Section:

A. Outdoor Entertainment: Entertainment outside an enclosed building to which more than twenty (20) persons may be admitted and for which a fee may be charged or accepted, including, dances, shows, plays, skits, musical revues, dance productions, musical concerts, theater, opera and the production or provision of sights or sounds or visual or auditory sensations that are intended to or may entertain. (Ordinance 2014-07, Adopted April 14, 2014)

7-14-3: PERMIT REQUIRED:

A. Outdoor entertainment conducted upon premises zoned B-2 District, B-3 District or PUD District allowing commercial uses as established in accordance with Chapter 20 of the City Code shall require an Outdoor Entertainment Permit issued in accordance with this Section.

B. All other outdoor entertainment events shall require a Special Event Permit as regulated by Chapter 7, Section 5 of the City Code.

C. Events sponsored and managed by the City of Otsego shall be exempt from the requirements of this Section. (Ordinance 2014-07, Adopted April 14, 2014)

7-14-4: APPLICATION:

- A. Application for an outdoor entertainment permit shall be filed with the City Clerk on an official application form signed by the applicant and property owner and shall be accompanied by a fee as provided for by Section 2-4-2 of the City Code.
- B. For single, nonrecurring outdoor entertainment events, an application for a permit shall be filed with the City Clerk at least ten (10) and not more than one hundred eighty (180) days before outdoor entertainment is proposed to commence.
- C. For outdoor entertainment to be held on a regular or recurring basis at the same location, an application for a permit covering all such outdoor entertainment during that calendar year must be filed with the City Clerk at least thirty (30) days and not more than one hundred eighty (180) days before the date and time at which the first outdoor entertainment is proposed to commence.
- D. The application shall include the following information:
 - 1. Names and addresses of event sponsor and property owner.
 - 2. The address at which the outdoor entertainment is to occur.
 - 3. A site plan indicating existing site improvements, the location of the outdoor entertainment and any other related facilities.
 - 4. Identify the days and hours during which the outdoor entertainment is to be held.
 - 5. Detail provisions made for availability of potable water and restroom facilities and trash containers.
 - 6. Measures for security and crowd management.
 - 7. State whether alcohol is to be served or sold at the event, provide documentation of required licenses and describe measures to ensure no sale or consumption occurs by people under twenty one (21) years of age.
 - 8. Identify use of any signs, banners or other advertising or promotional materials, which may require a separate permit under Chapter 20 of the City Code.
 - 9. Identify use of any additional or temporary outdoor lighting sources.
 - 10. Identify any sources of outdoor noise and use of equipment to amplify sound.

11. Describe any temporary structures including but not limited to stages, shelters, fences, stairs, and/or ramps.
12. Any additional information requested by the Zoning Administrator deemed necessary to consider the outdoor entertainment permit application.

E. Zoning Administrator Review:

1. The Zoning Administrator shall approve or deny an application for a license within ten (10) days of a complete application being submitted with written notice to be provided to the applicant.
2. The Zoning Administrator may impose additional conditions deemed necessary to mitigate nuisance concerns, ensure compatibility with surrounding uses and ensure compliance with the requirements of this Section.
3. Upon approval, the Zoning Administrator shall issue a permit to the person(s) named in the permit application.
 - a. The permit shall clearly state the name of a responsible individual and contact information during the event and the conditions, if any, imposed by the City.
 - b. Copies of the permit shall be posted in three (3) prominent locations upon the premises during the outdoor entertainment.
4. The Zoning Administrator shall state in writing the reasons for an application for a license having been denied. The applicant may resubmit an application for a license in accordance with the procedures or submit a request for appeal to the City Council as provided for in Section 7-14-7 of this Section. (Ordinance 2014-07, Adopted April 14, 2014)

7-14-5: PERMIT TERM AND EXPIRATION:

- A. The permit shall be issued annually for a calendar year and all permits shall expire on December 31 of each year.
- B. A permit may be renewed only by making application as provided for in Section 7-15-4 of this Section. (Ordinance 2014-07, Adopted April 14, 2014)

7-14-6: GENERAL PROVISIONS:

- A. The permit applicant shall provide a calendar that identifies the days in the week when the outdoor entertainment will be scheduled to occur:
 - 1. Outdoor entertainment shall be limited to not more than:
 - a. Two (2) events occurring Monday through Thursday
 - b. Two (2) events occurring on Friday or Saturday of each week.
 - 2. Outdoor entertainment occurring outside the approved calendar shall be prohibited unless an amended calendar is approved.
- B. Setbacks:
 - 1. Outdoor entertainment allowed under this section shall not occur upon any property within three hundred fifty (350) feet of a residential zoning district as established by Chapter 20 of the City Code.
 - 2. The location of the outdoor entertainment shall comply with all setback requirements applicable to the principal use of the zoning district in which the property is located as established by Section 20 of the City Code.
- C. Outdoor music events shall be allowed only during the following hours:
 - 1. Sunday to Thursday: 7:00AM to 11:00PM
 - 2. Friday and Saturday: 7:00AM to 12:00 Midnight
- D. Noise:
 - 1. The volume of the outdoor entertainment must be reasonable so as not to be plainly audible at the property line of a residentially zoned property and comply with Section 5-8-5.C of the City Code.
 - 2. Standards to be considered in determining if noise generated by an outdoor entertainment event is a violation of this section and Section 5-8-5.C of the City Code include, but are not limited to, the following:
 - a. The volume of the noise.
 - b. The intensity of the noise.
 - c. The volume and intensity of the background noise, if any.

- d. The proximity of the noise to a residential property.
 - e. The duration of the noise.
 - f. Whether the noise is recurrent, intermittent, or constant.
- E. All signs related to the outdoor entertainment shall comply with Chapter 20, Section 37 of the City Code.
- F. All exterior light sources shall be arranged as to deflect light away from any adjoining residential zone or from the public streets.
- G. The principal use shall have adequate water and sanitary sewer facilities as required by the City Code to accommodate the allowed capacity of the venue at which the outdoor entertainment is to occur.
- H. There shall be adequate off-street parking as required by Chapter 20, Section 21 of the City Code for the allowed capacity of the venue at which the outdoor entertainment is to occur. (Ordinance 2014-07, Adopted April 14, 2014)

7-14-7: ENFORCEMENT:

- A. Inspections:
- 1. Any permit holder shall, at all times during the term of the permit, allow the Zoning Administrator and/or Deputies of the Wright County Sheriff's Office to enter the premises for the purpose of verifying compliance with the requirements of this Section.
 - 2. The permit holder shall immediately comply with all requests of City staff and/or the Wright County Sheriff's Office to mitigate nuisance noise complaints.
- B. Suspension:
- 1. The Zoning Administrator and/or Deputies of the Wright County Sheriff's Office may immediately suspend a permit for activity they determine constitutes a threat to public health safety and welfare.
 - 2. The Zoning Administrator may suspend a permit for a period not to exceed thirty (30) days following written notice and an opportunity to be heard as provided for under Section 7-14-7.D of this Section if the Zoning Administrator determines that a permit holder has violated or is not in compliance with this Section.

- C. Revocation: The Zoning Administrator shall issue a written statement of intent to revoke permit for a cause of suspension if the following occurs:
1. The permit has been suspended two (2) times within the preceding twelve (12) months.
 2. A permit holder has knowingly provided outdoor entertainment during a period of time when the permit was suspended.
 3. Failure of a permit holder to comply with any requests of City staff and/or the Wright County Sheriff's Office to mitigate nuisance noise complaints.
- D. Process. The process for a permit holder to appeal a suspension or contest revocation of a permit shall be as follows:
1. Within ten (10) days of receipt of such notice of suspension or intent to revoke, the permit holder may provide to the Zoning Administrator, in writing, a response that shall include a statement of reasons why the permit should not be suspended or revoked.
 2. Notice of Meeting Date: Within ten (10) days of the receipt of permit holder's written response, the Zoning Administrator shall notify respondent in writing of the date of the meeting at which the City Council will consider the suspension appeal or revocation proceeding.
 3. City Council Review:
 - a. Within sixty (60) days of the notice issued by the Zoning Administrator to deny, suspend or consider revocation of a permit, the City Council shall consider the issue.
 - b. The applicant or permit holder shall have the right to appear and be offer evidence on its behalf.
 - c. The City Council shall by majority vote make the final decision as to an appeal to deny or suspend a permit or to revoke a permit for violation of this Section.
 - d. The City Clerk shall mail written notice of the City Council's decision to the applicant or permit holder including a statement advising the applicant or permit holder of the right to appeal such decision to a court of competent jurisdiction. (Ordinance 2014-07, Adopted April 14, 2014)

