

**TITLE 9**

Public Utilities

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**CHAPTER 1**

Water Utility Regulations

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**SEC. 9-1-1 WATER UTILITY; RULES AND REGULATIONS.**

- (a) The rules and regulations hereinafter named, together with such others as may hereafter be adopted, shall be a part of the contract with every consumer of water from the water utility of the City, and the application of every consumer shall be considered as his assent to be bound thereby.
- (b) Whenever any rule or regulation is violated, the water shall be cut off from the building or place of such violation, even though two (2) or more persons receive water through the same pipe, and shall not be turned on again except by order of the Utility Manager upon payment of established reconnection charges as expenses and such other terms as the Utility Manager may determine, and a satisfactory understanding that no further complaint shall arise.

**SEC. 9-1-2 APPLICATIONS FOR SERVICE.**

- (a) All applications for the introduction of water shall be made to the Utility Manager and/or Director of Public Works by the owner or occupant with the written consent of the owner of the premises, upon application blanks provided for that purpose.
- (b) Upon the filing of an application for water and there being no objection, the Utility Manager and/or Director of Public Works shall authorize some person to make such tap and install all necessary fittings and service piping.
- (c) Such applications shall be accompanied by the Payment in full for the cost of such tap, which shall include all the work in trenching and tapping and furnishing of necessary fittings and service piping up to the lot line in the making of such tap.

**SEC. 9-1-3 CONNECTIONS.**

All connections with the mains must be made with brass corporation cocks and copper pipe. All pipe to the service cock must be laid six (6) feet deep, and there shall be a stop cock and water box attached to every service pipe at the lot line on the line to the building, so as to admit the water being shut off. All taps two (2) inches and below made on PVC water mains shall have a double strap saddle.

**SEC. 9-1-4 MINIMUM SIZE WATER MAIN.**

The minimum size water main on all new construction will be eight (8) inches in all City streets and subdivisions, and variance will be allowed only on an individual basis. Variance may be granted only upon written application and approval by the Manager of the Light and Water Commission and the Director of Public Works.

**SEC. 9-1-5 CROSS CONNECTION CONTROL.**

- (a) A "cross connection" shall be defined as any physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water from the City of Cedarburg water system, and the other, water from a private source, water of unknown or questionable safety, or steam, gases or chemicals, whereby there may be a flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems.
- (b) No person, firm or corporation shall establish or permit to be established or maintain or permit to be maintained any cross connection. No interconnection shall be established whereby potable water from a private, auxiliary or emergency water supply other than the regular public water supply of the City of Cedarburg may enter the supply or distribution system of said municipality, unless such private, auxiliary or emergency water supply and the method of connection and use of such supply shall have been approved by the Cedarburg Light and Water Utility and/or the City Plumbing Inspector and by the Wisconsin Department of Natural Resources in accordance with Section NR 811.09(2), Wis. Adm. Code.
- (c) It shall be the duty of the Cedarburg Light and Water Utility and/or the City Plumbing Inspector to cause inspections to be made of all properties served by the public water system where cross connections with the public water system is deemed possible. The frequency of inspections and reinspections based on potential health hazards involved shall be as established by the City of Cedarburg and the Cedarburg Light and Water Utility and as approved by the Wisconsin Department of Natural Resources.
- (d) Upon presentation of credentials, the representative of the Cedarburg Light and Water Utility and/or the City Plumbing Inspector shall have the right to request entry at any reasonable time to examine any property served by a connection to the public water system of the City of Cedarburg for cross connections. If entry is refused, such representative shall obtain a special inspection warrant under Sec. 66.122, Wis. Stats. On request, the owner, lessee or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property.
- (e) The Cedarburg Light and Water Utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this Chapter exists and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water system. Water service shall be discontinued only after reasonable notice and opportunity for hearing under Chapter 68, Wis. Stats., except as provided in Subsection (f). Water service to such property shall not be restored until the cross connection(s) has been eliminated in compliance with the provisions of this Chapter.
- (f) If it is determined by the Cedarburg Light and Water Utility and/or the City Plumbing Inspector that a cross connection or an emergency endangers public health, safety or welfare and requires immediate action and a written finding to that effect is filed with the Clerk of the City of Cedarburg and delivered to the customer's premises, service may be immediately discontinued. The customer shall have an opportunity for hearing under Chapter 68, Wis.

Stats., within ten (10) days of such emergency discontinuance.

- (g) The City of Cedarburg adopts by reference the State Plumbing Code of Wisconsin being Chapter ILHR 82, Wis. Adm. Code.
- (h) This Section does not supersede the State and City Plumbing Code but is supplementary to them.

**SEC. 9-1-6 VACATION OF PREMISES.**

When the premises are to be vacated, the Water Department shall be notified in writing at once so that it may remove the meter and shut off the supply at the curb stop. The owner of the premises shall be liable to prosecution for any damage to the property of the Water Department by reason of failure to notify the Water Department of vacancy.

**SEC. 9-1-7 MAINTENANCE AND REPAIR OF SERVICE PIPE.**

The service pipe from the main to the property line will be maintained and kept in repair at the expense of the Water Department. However, it shall be the duty of the consumer to maintain the service pipe from the property line to the point of use, and the Water Department cannot be responsible for loss of water which has passed through the meter and has been wasted by leakage of defective pipes and fixtures.

**SEC. 9-1-8 WATER TO BE SHUT OFF FOR FAILURE TO REPAIR LEAKS.**

If a consumer fails to repair a leaky or broken service pipe from the property line to the point of use within such time as may appear reasonable to the Water Department after notification has been served on the consumer by the Water Department, the water will be shut off and will not be turned on again until the repairs have been completed.

**SEC. 9-1-9 STOP BOXES TO BE PROTECTED.**

The consumer shall protect the stop boxes located in his sidewalk or lawn and shall keep the same free from dirt and other obstructions. The Water Department shall not be liable for failure to locate stop boxes and shut off water in case of a leak on the consumer's premises.

**SEC. 9-1-10 WATER TO BE TURNED ON ONLY BY WATER DEPARTMENT.**

The water cannot be turned on or off at the stop box for a consumer except by a duly authorized employee of the Water Department. When a plumber has completed a job, he must leave the water turned off.

**SEC. 9-1-11 PLUMBING SYSTEM TO WITHSTAND PRESSURE.**

The owner of any building connected with the waterworks system may adopt such system of plumbing as he may see fit, but it must stand at least a pressure of two hundred (200) pounds to the square inch and be subject to the inspection by the Water Department and/or City Plumbing Inspector.

**SEC. 9-1-12 ACCESS TO PREMISES; INSPECTION OF TAPS; WASTING WATER.**

Any officer or authorized employee of the Water Department and/or the City Plumbing Inspector, when necessary, shall have the right of access during reasonable hours to the premises supplied with service for the purpose of inspection or for the enforcement of the Water Department's rules and regulations. The Water Department will make a systematic inspection of all unmetered water taps at least once every twelve (12) months for the purpose of checking waste and unnecessary use of water. If it is found that water is wasted willfully, negligently or through want of repairs and the same is not immediately remedied, the water leading to such premises shall be shut off and not released until such defect in the private or service pipes or other fixtures, as the case may be, has been remedied; in such case, the Manager shall give a notice in writing of such fact, to be mailed to the owner or occupant of the premises, and the owner or occupant shall be allowed twenty-four (24) hours to repair the same before the water will be shut off.

**SEC. 9-1-13 EXTENSIONS.**

Whenever extensions are issued or new attachments are to be made, permits must be obtained in the usual manner and the tapper must be notified to draw out the old tap and insert the new if necessary.

**SEC. 9-1-14 USE OF WATER DURING EMERGENCIES.**

The right is reserved by the Common Council or the Utility Manager to suspend the use of fountains, sprinkling of streets, yards, gardens, watering or washing of buildings, cars or other implements, use of water in air conditioners or use of other water not vital to the health and welfare of the consumer. In the event of an emergency, whereby the Manager of the Light and Water Commission determines that the Water Department shall have an inadequate water supply to meet the needs and requirements of the users of said water, an emergency may be declared by proclamation. During the period of such emergency, the Manager may place such restrictions and limitations upon the use of water being furnished by the Water Department as he may deem necessary.

**SEC. 9-1-15 BULK WATER.**

Persons desiring water for tanks and trucks or other intermittent supply will be charged at regular rates as per the schedule on file with the Public Service Commission.

**SEC. 9-1-16 WATER FOR BUILDING AND CONSTRUCTION WORK.**

Persons desiring water for building and construction will be charged at regular rates as are the schedule on file with the Public Service Commission.

**SEC. 9-1-17 WATER FOR SPRINKLING SYSTEMS AND STANDPIPES.**

If any persons being regular patrons of the waterworks system wish to lay large pipes to connect with buildings equipped with automatic overhead fire sprinkling systems or standpipes equipped with hose couplings to fit the City fire hose, to be used only in case of fire, permission will be given to connect the same with the mains at their own expense and, upon application, the Water Department will allow the use of the water, for fire purposes only, with an established monthly sprinkler charge, and for no other purpose without having first obtained permission from the Water Department.

**SEC. 9-1-18 TAMPERING WITH EQUIPMENT.**

No person, except the members of the Common Council, the Light and Water Commission, or members of the Fire Department, in case of fire or when drilling with the Department, and any such other duly authorized City officials or employees as may be designated shall open or, in any manner, tamper with any public or private hydrant, plug, draw-cock, hose or other attachment, without at first obtaining a permit and conforming to such conditions as the Manager may impose, nor shall any person authorized to open a hydrant delegate his authority to another or let out the wrenches or keys furnished such person, or allow the same to be taken from any house within the City, except for purposes strictly connected with the Fire Department.

**SEC. 9-1-19 DAMAGE TO EQUIPMENT.**

No person shall willfully deface, mark or in any way injure or meddle with the fire hydrants, valves or other parts of the waterworks system of the City or attempt to operate them without authority. No person shall place any obstruction in front of or around a hydrant.

**SEC. 9-1-20 METERS.**

- (a) Meters will be furnished, maintained and placed by the Water Department and are not to be disconnected or interfered with by the consumer.
- (b) All meters shall be so located that they shall be preserved from obstructions and allow easy access thereto for reading, inspecting and changing. All piping within the building must be supplied by the consumer. Additional meters are not allowed unless authorized by the Utility Manager (sewer credit meters excluded).

- (c) Meters will be installed and repairs due to ordinary wear will be made without cost to the consumer (sewer credit meters excluded). Any damage to a meter resulting from the carelessness of the consumer or failure to protect the same from frost, hot water or steam or other damaging elements shall be paid by the consumer or the owner of the premises.
- (d) Meters for residential customers shall be sized in the following manner: a meter with a five-eighths (5/8) inch inside bore for homes requiring a flow of more than ten (10) g.p.m. but less than twenty (20) g.p.m. and a meter with a three-quarters (3/4) inch inside bore for homes requiring a flow of twenty (20) g.p.m. but less than thirty (30) g.p.m.

**SEC. 9-1-21 METERS TO BE READ MONTHLY OR QUARTERLY; RATES.**

Meters are to be read monthly or quarterly as determined by the Utility Manager, and water bills are to be rendered accordingly and in conformity with the regular schedule of rates in force, and all bills for water rentals are to be rendered against and delivered to the owner of the premises where water is furnished, except where specifically requested by such owner that such bills be delivered to the occupant or tenant, provided, however, that if such occupant or tenant becomes delinquent in the payment of water rentals and the water is shut off from the premises in accordance with the regulations of the Water Department, the owner of such premises shall be liable for such delinquent charges, and the water will not be turned on again until such delinquent charge for water and such other charges as provided for in this Section and relating thereto shall be fully paid and satisfied.

**SEC. 9-1-22 DELINQUENT WATER BILLS.**

- (a) Monthly water bills due and not paid by the due date indicated on the bill shall be subject to a finance charge of one and one-half percent (1-1/2%) of the outstanding balance per month.
- (b) Failure to receive a water bill in no way exempts consumers from the provisions of this Chapter.
- (c) The Light and Water Commission shall not be responsible for the collection of water bills from renters who are required to pay their own bills.

**SEC. 9-1-23 DISCONTINUANCE OF WATER.**

Consumers desiring to discontinue the use of water must give notice thereof in writing on or before the monthly billing date, otherwise the minimum monthly charge for the next succeeding month will go into effect.

**SEC. 9-1-24 INTERRUPTION OF SUPPLY.**

No claim shall be allowed against the City by reason of the breaking of any main pipe, service pipe or cock, or for an interruption of supply, or by reason of breakage of the machinery, or stoppage of necessary repairs.

**SEC. 9-1-25 SURREPTITIOUS USE OF WATER.**

When the utility has reasonable evidence that a consumer is obtaining his supply of water, in whole or in part, by tampering with or altering the meter or other parts of the utility service connected to his property or equipment, the utility reserves the right to estimate the present use of such water and immediately present a bill for service unmetered as a result of such interference and such bill shall be payable subject to a twenty-four (24) hour disconnection of service. When the Water Department shall have disconnected the consumer for any such reason, the Water Department will reconnect the consumer upon the following conditions:

- (a) The consumer will be required to deposit with the utility an amount sufficient to guarantee the payment of the consumer's bills for utility service.
- (b) The consumer will be required to pay the utility for any and all damages to its equipment on the consumer's premises due to such stoppage or interference with its metering.
- (c) The consumer must further agree to comply with reasonable requirements to protect the utility against further losses.

**SEC. 9-1-26 FAILURE TO READ METER.**

- (a) When the Water Department is unable to read any meter after two (2) successive trials, the fact shall be plainly indicated upon the bill, the estimated charge assessed and the difference adjusted with the consumer when the meter is again read; that is, the succeeding bill will be computed with the gallons in each block of the rate schedule doubled and credit will be given on that bill for the amount of the estimated bill paid the preceding month.
- (b) If the meter is damaged or fails to operate for any reason, the Water Department will render a bill for the current period based on an average of the last two (2) quarters, providing there is no particular reason why the use during that period has not been normal. If the last two (2) periods cannot be properly used, the bill shall be estimated by some equitable method.

**SEC. 9-1-27 COMPLAINT METER TESTS.**

If a consumer demands that a test be made of his meter in addition to the periodic or installation test, he shall pay a test fee of Two Dollars (\$2.00) per inch of nominal size or fraction thereof. If the meter is found fast in excess of two percent (2%), the payment for the test will be refunded and the usual adjustment made in the past bill.

**SEC. 9-1-28 FLUORIDATION OF CITY WATER.**

Upon receiving the consent and approval of the State Board of Health and until further direction of the Common Council, the Water Utility shall introduce approximately one (1) to one and one-half (1-1/2) parts of fluoride to every million parts of water being distributed in the water supply system of the City.

**SEC. 9-1-29 PRIVATE WELL PROGRAM.** (Ord. 2005-12)

- (a) **Purpose.** To prevent unused or improperly constructed wells from serving as a passage for contaminated surface or near-surface waters or other materials to reach the usable ground water.
- (b) **Coverage.** All private wells located on any premises which are fed by the public water system of the City shall be properly inspected for cross connections, tested for bacteria, and permitted at the private well owner's expense.
- (c) **Inspection.** The cross connection inspection shall consist of a licensed well contractor/plumber inspecting the premises to certify that no physical connection exists between the piping of the public water system and the private well. This inspection shall be done before a permit is issued.
- (d) **Testing.** The well and pump shall have a history of producing bacteriologically safe water. Before a permit can be issued, a minimum of one safe sample must be taken from the well.
- (e) **Well Operation Permits.** A permit may be granted to a well owner to operate a well for a period not to exceed five (5) years at a cost of \$50 if the following requirements are met. (Application shall be made on forms provided by the utility.)
  - (1) The well and pump installation meet the requirements of Chapter NR 812 Wisconsin Administrative Code, and a well constructor's report is on file with the Department of Natural Resources, or certification of the acceptability of the well has been granted by the Private Water Supply Section of the Department of Natural Resources.
  - (2) The well has a history of producing safe water, as evidenced by past bacteria tests, and presently produces bacteriologically safe water.
  - (3) The proposed use of the well can be justified as being necessary by the homeowner in addition to water provided by the public water system.
  - (4) No physical connection shall exist between the piping of the public water system and the private well.

**SEC. 9-1-30 PRIVATE WELL ABANDONMENT.** (Ord. 2005-12)

- (a) **Purpose.** To prevent unused and/or improperly constructed wells from serving as a passage for contaminated surface or near-surface waters or other materials to reach the usable ground water. These wells must be properly filled and sealed by a licensed well contractor/plumber. If at anytime during the permit cycle the well has been determined bacteriologically unsafe, the well must be abandoned within 60 days of notification by the Cedarburg Light and Water Utility.
- (b) **Methods.** Wells to be abandoned shall be filled according to the procedures outlined in Chapter NR 812, Wis. Adm. Code. The pump and piping must be removed and the well checked for obstructions prior to plugging. Any obstruction or liner must be removed.
- (c) **Reports and Inspection.** A well abandonment report must be submitted by the well owner to the Department of Natural Resources on forms provided by that agency (available at the office of the Cedarburg Light & Water Utility). The report shall be submitted immediately upon completion of the filling of the well. A representative of the Utility must inspect the

well after it has been filled.

**SECTION 9-1-31 FILLING OF PRIVATE POOLS** (Ord. 2005-12)

- (a) No permission will be granted by the Utility to use a hydrant for the purpose of filling a private pool until the spring flushing is finished.
- (b) The owner shall contact the Utility as to the size of the pool to be filled or the approximate gallons to be used. The Utility and requesting party shall establish a payment schedule.
- (c) The owner shall contact the Fire Department and arrange for a fireman to run the hydrant and for the Department to supply the hose and valve.
- (d) The fireman shall contact the utility and inform the Utility which hydrant he will use.
- (e) A minimum Ten Dollar (\$10.00) connection fee shall be payable for the filling of private pools, plus a fee of One Dollar (\$1.00) per one thousand (1,000) gallons of water used.

## CHAPTER 2

### Sewer Use Regulations

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#### **SEC. 9-2-1 CREATION.**

The Common Council of the City of Cedarburg, pursuant to the provisions of Sec. 66.067 of the Wisconsin Statutes, does hereby declare that the Sewerage System of the City of Cedarburg, consisting of the collection system (as hereinafter defined), waste collection and disposal operations, sewerage system and all other appurtenances and equipment used for such purposes, or Wastewater Treatment Facility (as hereinafter defined), shall be designated the Sewerage System Utility. This public utility is not a public service subject to regulation by the Wisconsin Public Service Commission for the purposes defined above.

#### **SEC. 9-2-2 MANAGEMENT.**

- (a) The operation, management and control of the Sewerage System Utility is vested in the Common Council of the City of Cedarburg as a Sewage Commission under the provisions of Sec. 66.066(1) of the Wisconsin Statutes and is hereinafter referred to as the "Approving Authority." All records of the Sewerage System Utility shall be kept by the Director of

Engineering and Public Works and Superintendent in the City Hall or other officially designated place.

- (b) The rules, regulations and rates hereinafter set forth shall be considered part of the regulations applicable to every individual or entity connected to the Sewerage System and all persons discharging wastes to the Sewerage System. Said rules, regulations and rates may be changed from time to time as determined by the Common Council, and the right is reserved to make special rates and contracts in all proper cases.
- (c) The Common Council shall cause an annual audit of the books of the Sewerage System Utility and shall make the books and records relating to the Sewerage System Utility available for inspection during regular business hours.

### **SEC. 9-2-3 APPLICATION.**

The application of this Chapter, its rules, regulations and rates, shall apply to all individuals, firms, corporations and institutions residing within the corporate limits of the City of Cedarburg and any person, firm or corporation, by attachment to the Sewerage System or otherwise by contract or agreement coming within the City of Cedarburg sewer service area subsequent to the effective date hereof, and all entities hauling wastes or trucking wastes and discharging to the Sewerage System.

### **SEC. 9-2-4 DEFINITION OF TERMS.** (Ord. 95-12)

- (a) The meaning of terms used in this Chapter shall be as follows:
  - (1) Act shall mean the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500) and Pub. L. 93-243, or as modified by Chapter 147, Statutes of the State of Wisconsin, or appropriate sections of the Wisconsin Administrative Code adopted pursuant to Chapter 147.
  - (2) Approving Authority shall mean the Common Council of the City of Cedarburg or its duly authorized deputy, agent or representative.
  - (3) BOD shall mean the quantity of oxygen expressed in milligrams per liter (mg/l), utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five (5) days at a temperature of twenty (20) degrees Centigrade. The laboratory determinations shall be made in accordance with procedures set forth in "Standard Methods."
  - (4) Building, Sewer, Lateral or Service Pipe shall mean a sewer which carries only sewage or industrial wastes from the building plumbing to the public sewer.
  - (5) Category A, Domestic Wastewater shall mean water-borne wastes normally being discharged from the sanitary conveniences of dwellings, apartment houses, hotels, office buildings, factories and institutions, free of industrial wastes and in which the average concentration of suspended solids is established at or below two hundred twenty-five (225) mg/L, the BOD is established at or below two hundred (200) mg/L, the TKN at or below thirty (30) mg/L, and the total phosphorus at or below ten (10)

mg/L.

- (6) Category B, Industrial User shall mean any nongovernmental, nonresidential user of a publicly owned sewerage system which discharges more than the equivalent of five thousand (5,000) gallons per day (GPD) of sanitary wastes and those activities as identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions: (1) Division A. Agriculture, Forestry, and Fishing; (2) Division B. Mining; (3) Division D. Manufacturing; (4) Division E. Transportation, Communications, Electric, Gas, and Sanitary Services; (5) Division I. Services. In determining the amount of a user's discharge for purposes of industrial cost recovery, the City may exclude domestic wastes or discharges from sanitary conveniences. After applying the sanitary waste exclusion, discharges in the above divisions that have a volume exceeding five thousand (5,000) GPD or the weight of biochemical oxygen demand (BOD) or Suspended Solids (SS) equivalent to that weight found in five thousand (5,000) GPD of sanitary waste are considered industrial users. Sanitary wastes, for purposes of this calculation of equivalency, are the wastes discharged from residential users. Any non-governmental user of publicly owned wastewater treatment facilities which discharges wastewater to the Wastewater Treatment Facilities which contains toxic pollutants or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance or creates any hazard in or has an adverse effect on the water receiving any discharge from the Wastewater Treatment Facilities shall be an industrial user, even if it does not discharge the equivalent of five thousand (5,000) gallons per day of sanitary waste.
- (7) Collection System shall mean the system of sewers and appurtenances for the collection, transportation and pumping of domestic wastewater and industrial waste. (Ord. 95-12)
- (8) Connection shall mean each physical connection to the collection system or private sewer system which connects to the municipal collection system.
- (9) Debt Retirement shall mean all annual principal and interest requirements and obligations of the Approving Authority for the Wastewater Treatment Facilities.
- (10) Discharge Monitoring Station shall mean a sampling and metering station required to be installed through a discharge monitoring agreement signed by an industrial user in order to obtain information on a users discharge to the system and to establish sewer user and debt charges.
- (11) Flow Proportional Composite Sample shall mean a sample consisting of portions of waste taken in proportion to the volume of flow of said wastes.
- (12) Industrial Cost Recovery shall mean recovery by the Approving Authority from the industrial users of a sewerage system of the amount allowable to the treatment of wastes from such users pursuant to Section 204(b) of the Federal Act.

- (13) Industrial Waste shall mean any water-borne solids, liquids or gaseous wastes other than domestic wastewater, resulting from discharging from, flowing from or escaping from any commercial, industrial, manufacturing or food processing operation or process or from the development of any natural resource or any mixture of these with water or domestic wastewater.
- (14) Intercepting Sewer shall mean a sewer constructed to receive the dry weather flow of untreated or inadequately treated sewage from one (1) or more existing sanitary sewer system terminals other than from a dwelling or building that presently discharges or formerly discharged flow directly into any waters of the state and convey the flow to a Wastewater Treatment Facility (WWTF) or is to serve in lieu of an existing or proposed Wastewater Treatment Facility.
- (15) Natural Outlet shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.
- (16) Nitrogen shall mean Total Kjeldahl Nitrogen as determined by procedures set forth in "Standard Methods."
- (17) Normal Sewage shall mean sanitary sewage in which BOD, suspended solids, phosphorus or nitrogen concentrations do not exceed normal concentrations of:
- a. A five (5) day twenty (20) degree C., BOD of not more than two hundred (200) parts per million;
  - b. A total suspended solids concentration of not more than two hundred twenty-five (225) parts per million; or
  - c. Phosphorus not more than ten (10) parts per million.
  - d. Nitrogen [not more than thirty (30) parts per million].
- (18) Operation and Maintenance Cost shall mean the actual sums spent by the City in the operation and maintenance of its Sewerage System consisting of but not limited to each and all of the following purposes:
- a. Wages and salaries and employees' related expenses of operating, maintenance, clerical, laboratory and supervisory personnel, together with fringe benefits and premiums paid on such wages and salaries for the State of Wisconsin Worker's Compensation coverage.
  - b. Electrical power and other utility services.
  - c. Chemicals, fuel and other operating supplies.
  - d. Repairs to and maintenance of associated equipment.
  - e. Premiums for hazard insurance.
  - f. Premiums for insurance providing coverage against liability for the injury to persons and/or property.
  - g. Rents and leasing costs.
  - h. Operation, licensing and maintenance costs for trucks and heavy equipment.
  - i. Consultant and legal fees.
  - j. Training and education expenses.
- (19) Persons shall mean any and all persons, natural or artificial, including any individual, firm, company, municipal or private corporation, association, governmental agency

- or other entity and agents, servants or employees.
- (20) pH shall mean the logarithm [base ten (10)] of the reciprocal of the hydrogen concentration expressed in moles per liter. It shall be determined by one of the procedures outlined in the "Standard Methods."
  - (21) Phosphorus shall mean the total phosphorus as determined by the procedures set forth in "Standard Methods."
  - (22) Public Sewer shall mean a sewer or lateral in a public right-of-way or easement abutting properties and is controlled or owned by the public authority.
  - (23) Replacement Fund shall mean expenditures for obtaining and installing equipment, accessories and appurtenances which are necessary during and beyond the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed.
  - (24) Residential Equivalency Charge shall mean a charge levied on users for debt retirement, operation and maintenance costs and replacement fund. The charge shall be based on the average gallons of water used by a residential customer as determined by the Water Utility and multiplied by the cost per one thousand (1,000) gallons for operation and maintenance costs, debt and replacement fund.
  - (25) Residential Equivalent Connection (REC) shall be the wastewater flow and loadings to the system equivalent to that contributed by an average residential family equivalent. An average residential family equivalent shall be calculated yearly by the City based upon the residential water used divided by the total number of residential customers.
  - (26) Sanitary Sewer shall mean a sewer that conveys domestic wastewater or waste, or a combination of both, and into which storm, surface and ground waters or unpolluted industrial wastewater are not intentionally contributed.
  - (27) Septate shall mean scum, liquid, sludge or other waste from a septic tank, absorption field, holding tank, vault toilet or privy. This does not include the waste from a grease trap.
  - (28) Sewerage System shall mean all facilities for collecting, transporting, pumping, treating and disposing of domestic wastewater, industrial wastes and septate. Also may be referred to as sewer system.
  - (29) Slug shall mean any discharge of water or wastewater which, in concentration of any given constituent or in quantity of flow, exceeds for any period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation and which adversely affects the collection system and/or performance of the Wastewater Treatment Facilities.
  - (30) Standard Methods shall mean the examination and analytical procedures set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater" as prepared, approved and published jointly by the American Public Health Association and the Water Pollution Control Federation.
  - (31) Storm Sewer shall mean a sewer which carries storm and surface drainage but excludes domestic wastewater and industrial wastes.

- (32) Superintendent shall mean the Superintendent of the wastewater treatment and conveyance facilities who shall be in charge of and supervise the operations and functions of the wastewater treatment and conveyance facilities.
- (33) Surcharge User shall mean a user of the Sewerage System who discharges wastes which have higher concentrations than domestic wastewater and is assessed an additional charge (surcharge) for the constituents higher in concentration than domestic wastewater.
- (34) Total Suspended Solids shall mean solids that either float on the surface of, or are in suspension in, water, sewage or other liquids and which are removable by a laboratory filtration device. Quantitative determination of total suspended solids shall be made in accordance with procedures set forth in "Standard Methods." Also referred to as suspended solids.
- (35) Unpolluted Water shall mean water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharging to the sanitary sewers and wastewater treatment facilities provided.
- (36) User shall mean any person discharging domestic wastewater or industrial wastes into the collection system or entity discharging septate or other waste hauled or trucked to the sewerage system.
- (37) Use Factors shall mean flow, BOD, total suspended solids, nitrogen, phosphorus and infiltration/inflow or the quantity of these factors as determined by the City by sampling and monitoring the Wastewater Treatment Facility influent and surcharge users and from the Water Utility records.
- (38) Waste shall mean any solids, liquid or gaseous material or combination thereof discharged from any residences, business buildings, institutions, industrial establishments and septate haulers into the collection system, storm sewer or septate receiving station.
- (39) Wastewater shall mean a combination of the water-carried waste discharged into the collection system from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm water as may be present.
- (40) Wastewater Pumping Station shall mean a pumping facility utilized to pump wastewater within the collection system.
- (41) Wastewater Treatment Facilities shall mean any City-owned facility, devices and structures used for receiving and treating wastewater from the City collection system.
- (42) Water Utility shall mean the Cedarburg Light and Water Utility.
- (43) WPDES Permit shall mean a permit to discharge pollutants obtained under the Wisconsin Pollutant Discharge Elimination System (WPDES) pursuant to Chapter 147 of the Wisconsin Statutes.

**SEC. 9-2-5 RULES AND REGULATIONS.**

(a) **Declaration of Policy.** The Common Council of the City of Cedarburg finds and declares that the public health, comfort and safety is preserved and enhanced by the provision of the Sewerage System in the promotion of a clean and healthful environment and that the failure to connect to the Sewerage System is contrary to minimum health standards.

(b) **Connection.**

(1) To assure preservation of public health, comfort and safety, the owner of any house, building or property used for human occupancy, employment, recreation or other habitation, situated within the City and adjacent to a public sewer or in a block through which a public sewer extends is hereby required, at his expense, to install suitable toilet facilities therein and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Chapter within twelve ( 12) months after the public sewer first becomes operational or if an immediate health hazard exists within thirty (30) days upon receipt of notice from the County Health Officer or the City Building Inspector.

(2) If a person fails to comply with the said notice to connect within the given period of time, the City may, at its option:

- a. Cause such connection to be made and bill the property owner for such costs. If such costs are not paid within thirty (30) days, such costs shall be assessed as a special tax lien against the property, unless the owner, within thirty (30) days after the completion of the work, files a sworn affidavit with the City Clerk stating that he cannot pay such amount in one (1) sum and asking that it be levied in not to exceed five (5) equal annual installments, and the amount shall be so collected with interest at a rate which is sufficient to recover the City's costs of borrowed funds or interest lost plus one (1) percentage point per annum from the completion of the work, the unpaid balance to be a special tax lien; and
- b. Impose a standby charge for the period of time in excess of twelve (12) months that such failure continues after the date the public sewer first becomes operational after ten (10) days' written notice to any owner failing to make a connection to the Sewerage System for an amount equal to one hundred fifty percent (150%) of the Residential Equivalency Charge, payable monthly for the period in which the failure to connect continues. Upon failure to make such payment, said charge shall be levied as a tax against the lot or parcel to which sewerage service was furnished.

(c) **Alternative Disposal Prohibited.**

- (1) No person shall construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended to be used for the disposal of domestic wastewater if a public sewer is available.
- (2) No person shall discharge to any natural outlet within the City in any given area under the jurisdiction of the City sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Chapter.

- (d) **Plumbers.** No plumber or other person will be permitted to engage in or work at any plumbing in connection with the Sewerage System without first receiving a license from the State of Wisconsin, Bureau of Plumbing.
- (e) **Maintenance of Services.** All sewer services within the limits of the City at the point of connection to the street main and all street mains shall be maintained and repaired by the City without expenses to the property owner, except when they are damaged as a result of negligence on the part of the property owner or occupant, in which case they will be repaired at the expense of the property owner. All building sewers and laterals located in the public right-of-way or easement from the point of connection to the sewer main and all facilities throughout the premises served must be maintained free of defective conditions by and at the expense of the owner or occupant of the property served.
  - (1) It shall be the duty of the abutting land owner to maintain in a reasonable state of repair all sanitary and storm sewer laterals leading from the property to the main sewer. Where any lateral located within, under or on any street, alley or public way is either out of repair or has caused damage to the surface or substructure of the street in any way, the City shall order the abutting land owner to make the necessary repairs. If the owner refuses to comply with the order, or if the owner cannot be determined or found, the City shall make the repairs, assess the cost against the property abutting the lateral. (Ord. 96-04)
- (f) **Users.**
  - (1) Application for Service.
    - a. Every person requesting connection to the Sewerage System shall file an application in writing to the City in such form as is prescribed for that purpose. Blanks for such applications will be furnished at the office of the Building Inspector. The application must state fully and truly all the use which will be presently made. If any change in use from that set forth in this application is contemplated, the user must obtain further application and permission from the Building Inspector. If the applicant is not the owner of the premises, the written consent of the owner must accompany the application.
    - b. The application may be for service to more than one (1) building or more than one (1) unit of service through one (1) service connection; and, in such case, charges shall be made accordingly.
    - c. If it appears that the service applied for will not provide adequate service for the contemplated use, the Building Inspector may reject the application. If the Building Inspector approved the application, the Building Inspector shall issue a permit for services as shown on the application.
    - d. All expenses relating to the connection to the Sewerage System shall be paid by the applicant or owner.
  - (2) Tap Permits. After sewer connections have been introduced into any building or upon any premises, no plumber shall make any alterations, extensions or attachments, unless the party ordering such tapping or other work shall obtain and

- exhibit the proper permit for the same from the Building Inspector.
- (3) User to Keep in Repair. All users shall keep their own service pipes in good repair and protected from frost, at their own risk and expense, and shall prevent any unnecessary overburdening of the Sewerage System. The user is responsible for their service pipe from the street main through their premises.
  - (4) User Use Only. No user shall allow other persons to connect to, or permit other uses to be made of, the Sewerage System through his lateral.
  - (5) User to Permit Inspection. Every user shall permit the City or its duly authorized agent, at all reasonable hours of the day, to enter their premises or building to examine the pipes and fixtures and the manner in which the drains and sewer connections operate; and they must, at all times, frankly and without concealment, answer all questions put to them relative to its use. Should the owner or occupant of the premises refuse voluntary access to the premises, the Building Inspector is authorized to seek a special inspection warrant under Sec. 66.122, Wis. Stats.
  - (6) Responsibility. No claim shall be made against the City or its agents or employees by reasons of the breaking, clogging, stoppage or freezing of any pipe, nor from any damage arising from repairing mains, making connections or extensions or any other work that may be deemed necessary by the City absent gross negligence of the City, its agents or employees. The City may cut off the service at any time for the purpose of repairs or any other necessary purpose, any permit granted or regulation to the contrary notwithstanding. Whenever it shall become necessary to shut off the sewer service within an area of the City, the City shall, if practicable, give notice to each affected user.
  - (7) Application for Septate Disposal.
    - a. Between August 1 and September 1 of each year, every licensed disposer wishing to discharge septate to the Cedarburg Wastewater Treatment Facility shall file a nonrefundable filing fee in the amount of Twenty-five Dollars (\$25.00) and an application in writing to the Director of Engineering and Public Works in such a form as is prescribed for that purpose. During the months of July and August, forms of such application will be furnished at the office of the Superintendent. The application must state fully and truly the type, frequency, quantity, quality and location of generated septate to be disposed at the Cedarburg Wastewater Treatment Facility.
    - b. During the month of September, the Director of Engineering and Public Works will evaluate the applications and make a determination as to the amount and conditions of septate disposal at the wastewater treatment facility. The City shall approve or reject all applications by October 1 of each year. If the Wastewater Treatment Facility cannot accept all the proposed septate disposal, then consideration shall be given first to those generators of septate that are within the sewer service area.
    - c. All approvals for septate disposal shall have the conditions that any time the wastewater treatment works has operational problems, maintenance problems

or threat of WPDES permit violation that are indirectly or directly related to septate disposal, the City may immediately restrict septate disposal until such time as corrective action or mitigative measures have been taken.

- (g) **Excavations.** Excavation requirements in the public right-of-way shall be as specified and required by the authority having jurisdiction over said right-of-way. In all cases, a permit is required.
- (h) **Laterals.**
  - (1) All laterals on private property will be installed in accordance with the State of Wisconsin Administrative Code, as from time to time amended.
  - (2) The building sewer shall be inspected by the Building Inspector or his designee upon completion of placement of the pipe and before backfilling and tested before and after backfilling.
- (i) **Tapping the Mains.**
  - (1) No persons, except those having special permission from the City or persons in their service and approved by them, will be permitted under any circumstances to tap the public sanitary sewers. The kind and size of the connection to the public sanitary sewers shall be that specified in the permit or order from the City. A minimum of forty-eight (48) hours' notice shall be given to the City prior to tapping any main.
  - (2) Pipes should always be tapped at the top and not within six (6) inches of the joint, or within twenty-four (24) inches of another lateral connection.
  - (3) When any building sewer service is to be re-laid and there are two (2) or more buildings on such service, each building shall be disconnected from such service and a new building sewer shall be installed for each building.
- (j) **Septate Acceptance Location.**
  - (1) Septate shall only be discharged to Cedarburg's Wastewater Treatment Facility by City-approved and State of Wisconsin licensed disposers and at locations, times and conditions as specified by the City.
  - (2) The designated septate receiving location is located at the Wastewater Treatment Facility. All septate shall be discharged at the Wastewater Treatment Facility unless approval is obtained from the Director of Engineering and Public Works for discharge of septate to other locations in the sewer system.
  - (3) Discharges shall be limited to the normal working hours of the Wastewater Treatment Facility. Written documentation of the discharge must be submitted to the Superintendent or his designee prior to discharge to the septate receiving station. If septate discharge is allowed at other locations in the sewer system, written documentation must be submitted to the Superintendent within one (1) working day of the discharge to the sewer system. Blanks for documentation of the discharge will be furnished at the Wastewater Treatment Facility and will include the following:
    - a. Name, address and telephone number of the hauler.
    - b. License number.
    - c. Type of septate.
    - d. Quantity of septate.

- e. Estimated quality of septate.
- f. Location, date, time and feed rate of discharge to the Sewerage System.
- g. Source of septate.
- h. Name and address of septate generator.
- i. Other information.

**SEC. 9-2-6 SEWER SERVICE CHARGES.** (Ord. 95-12) (Ord. 2002-21) (Ord. 2003-36) (Ord. 2004-44)  
(Ord. 2005-43) (Ord. 2006-41) (Ord. 2007-06) (Ord. 2007-31)  
(Ord. 2008-31)(Ord. 2009-21)(Ord. 2010-24)

(a) **Basis for Sewer Service Charges.** The sewer service charge shall be based on the sewer use charge. If any user of the sewer system procures any part or all of his water from sources other than the Water Utility, the user shall furnish, install and maintain, at his expense, water meters of a type approved by the Water Utility for the purpose of determining the volume of sewage discharged to the sewer system as described in Section 9-2-13. A meter reading charge shall be charged to those users who procure water from other sources than the Water Utility and who install a water meter for determining sewer user charges. At the discretion of the Sewage Commission, a user procuring water from other sources than the Water Utility may be assigned a Residential Equivalent Connection (REC) to be used as a basis of the sewer use charge as determined by Section 9-2-19. If, in the opinion of the Director of Engineering and Public Works, the information in Section 9-2-19 does not accurately reflect the users' wastewater discharge to the sewerage system, then the Director of Engineering and Public Works may assign a REC to the user. Refer to Section 9-2-5(c) for maintenance of service charge. (Ord. 96-04)

(b) **Sewer User Charge.**

- (1) a. A sewer user charge is hereby imposed upon all users of the sewer system. The sewer user charge shall have a component for recovering the operation, maintenance, and replacement cost and a portion or all of the debt cost of the sewerage system. On or before September 1 of every year, the Director of Engineering and Public Works shall compute the sewer user charge per one thousand (1,000) gallons of water used. The operation, maintenance, replacement, and debt service portion of the sewer user charge shall be computed by allocating the proposed net yearly operation, maintenance, and replacement budget to the appropriate use factors. The cost-per-use factor shall be divided by the City in conjunction with the use factor to determine the unit cost (\$/1,000 gallons \$/#), per use factor. The flow use factor will be determined by the City in conjunction with the Water Utility. The BOD, Total Suspended Solids, Total Kjeldahl Nitrogen, and Phosphorus use factors will be determined from the concentration assigned to domestic wastewater plus surcharge user data. The flow use factors will be determined by the Director of Engineering and Public Works, considering actual data for the previous twelve (12) month period from the Wastewater Treatment Facility

and surcharge user data. The residential water consumption of sprinkling as determined by the Water Utility and any water credit meters for any refrigeration, air conditioning system, or industrial cooling water not entering the sewer system shall not be used in computing the sewer use charge. The Common Council is further authorized to adjust the sewer user charge by means of adoption of an ordinance setting sewer rates from time to time as circumstances require to recover the operation, maintenance, and replacement costs and a portion of all of the debt costs of the sewerage system. This authority shall be in addition to the annual revision set forth above.

- (b) The sewer user charges and rates set forth in the annual sewer department budget.
  - (2) Users with domestic wastewater connected to the sewer system who derive all or part of their water discharged to the sewer system from other sources than the Water Utility and who do not have these other water sources metered will be charged for operation, maintenance and replacement costs based upon their assigned number of residential equivalent connections. The flow per residential equivalent connection will be computed by the Water Utility or the Director of Engineering and Public Works on or before September 1 of every year and shall equal the water used by residential customers minus sprinkling credits divided by the number of residential water customers.
  - (3) The principal and interest debt recovery for the Wastewater Treatment Facility (WWTF) shall be recovered by a special assessment for a fixed portion of the WWTF and on a use basis for the remaining portion of the debt. On or before September 1 of every year, the yearly debt cost for use will be computed by the Director of Engineering and Public Works by subtracting the special assessment payments for the upcoming year from the total debt cost projected for the upcoming year for the WWTF. The debt cost for use will be allocated to the appropriate use factors. The cost per use factor will be divided by the use factor to determine the unit cost (\$1,000 gallons, \$/#) per use factor. The use factors shall be the same as determined for the recovery operation, maintenance and replacement costs. The flow use factor will be determined by the City in conjunction with the Water Utility. All other use factors will be determined by the Director of Engineering and Public Works in a similar manner as the use factors for operation and maintenance costs.
  - (4) Users with domestic wastewater connected to the sewerage system who derive all or part of their water discharged to the Sewerage System from other sources than the Water Utility and who do not have these other water sources metered will be charged for the debt cost for use associated with the WWTF based upon their assigned number of residential equivalent connections as determined by the Director of Engineering and Public Works.
- (c) **Sewer Connection Fee**  
A connection charge is imposed to fund collection system oversizing associated with new

development and all newly annexed lots. This includes all lots created by land division, subdivision or condominium plats. The charge is not applicable to individual existing single vacant lots which are within the City. It does apply to newly annexed individual lots.

- (1) The Sewer Connection Fee Schedule is as follows:
    - \$1,177.96 per single-family dwelling
    - \$840.82 per unit for two-family residences
    - \$690.54 per unit for multi-family
    - \$1,177.96 per residential equivalent for commercial, industrial and institutional
  - (2) The connection fee imposed under this section shall be adjusted annually each December, with any adjustment to be effective on January 1 of the following year. The annual adjustment will be based on the Construction Cost Index (CCI) published in the Engineering News Record. Said percentage shall be calculated on the ENR 20 city average. Periodic adjustments to reflect actual and planned development density corrections may be necessary.
- (d) **Rehabilitation and Other Collection System Capital Improvements.** The debt cost associated with the rehabilitating and capital improvements of the collection system may be collected City-wide through a mill tax or user charges. A fund may be collected each year through a City-wide mill tax or user charges for the capital improvement of the collection system. This annual fund shall be reviewed by the City every four (4) years for appropriateness to meet the financial needs. A separate account is to be established for this fund.
- (e) **Wastewater Treatment Facility (WWTF) Replacement Fund.** A charge shall be imposed upon the users of the sewer system for the purpose of capital improvements of the WWTF and for purposes of establishing a replacement fund as required by Section NR 128.02(18), Wis. Adm. Code. The WWTF replacement fund will be collected on the same basis as the use factors for the operation and maintenance budget. The City shall review the appropriateness of this fund every two (2) years. A separate account is to be established for this fund.
- (f) **Industrial and Commercial Charges for Other Than Domestic Wastewater.**
- (1) Charges for wastewater other than domestic wastewater shall be based on flow, BOD, suspended solids, phosphorus, nitrogen and such other constituents which affect the cost of the collection and treatment. All persons discharging wastes into the Sewerage System are subject to a surcharge, in addition to any other wastewater service charge, if their wastewater has a concentration greater than domestic wastewater concentrations. The volume of flow used for computing waste surcharges shall be the metered water consumption, or the actual volume of waste as determined by a sampling and metering manhole or a discharge monitoring station. The amount of surcharge shall reflect the cost incurred by the City in removing BOD, suspended solids, phosphorus, nitrogen and other pertinent constituents. The surcharge shall be computed on the basis of Model No. 2 contained on page 5270 of the Federal Register, Volume 39, No. 29, February 11, 1974.

$$\text{Surcharge} = [B_c (B) + S_c (S) + P_c (P) + N_c (N)] V_u$$

$B_c$  = O&M, replacement and debt costs for treatment of a unit of biochemical oxygen demand (BOD)

$B$  = Concentration of BOD from a user above the base level

$V_u$  = Volume contribution from a user per unit of time  $S_c, S, P_c, P, N_c, N$  =  
Same definition as above for the parameters suspended solids, phosphorus and nitrogen.

(g) **Septate Charge.**

(1) Charges for septate discharges shall be based on flow, BOD, suspended solids, phosphorus, nitrogen and such other constituents which affect the cost of the collection and treatment. All persons discharging septate which has concentrations greater than domestic wastewater are subject to a surcharge. The volume of flow used for computing the septate charge will be the volume of septate discharged. The amount of surcharge shall reflect the cost incurred by the City in removing BOD, suspended solids, phosphorus, nitrogen and other pertinent constituents. The surcharge shall be computed in the same manner as described in Section 9-2-5(h).

(2) Unless sampled, the characteristics of septate shall be as follows:

	<u>Residential Septic Tank</u>	<u>Residential Holding Tank</u>
<u>BOD</u>	<u>7,000 mg/l</u>	<u>800 mg/l</u>
<u>TSS</u>	<u>15,000 mg/l</u>	<u>1,800 mg/l</u>
<u>Phosphorus</u>	<u>250 mg/l</u>	<u>24 mg/l</u>
<u>Nitrogen</u>	<u>70 mg/l</u>	<u>45 mg/l</u>

(3) The surcharge shall be based upon these parameters and the volume of septate discharged unless the septate is sampled. All costs associated with sample collection, storage, analysis and administration shall be paid for by the septate hauler.

(4) The minimum user charge rate for septate shall be the same as that for a residential holding tank using the wastewater characteristics listed above. The septate charge shall include a service charge for maintenance of the septate receiving station and administration of the septate receiving program.

(h) **Special Rates.** It is understood, however, that the approving authority may, at any time hereafter, set special rates for any large commercial service, industrial use, extraterritorial areas, contract users or any other unique user that does not readily fit into other categories of users.

**SEC. 9-2-7 ANNUAL BUDGET AND METHOD OF PAYMENT OF CHARGES.**

- (a) **Budget.** Annually before November 1st, the City shall prepare a budget for the following fiscal year which shall be separated into sections, the first for operation and maintenance and the second for debt service.
- (b) **Revenues.** Revenues for the operation and maintenance budget shall include any projected year-end balance (excluding replacement funds), operating fund investment income, contract revenues, permit fees, special rates and sewer user charges.
- (c) **Expenditures.** Expenditures for the operation and maintenance budget shall include all costs defined in Section 9-2-4(a)(18), plus any projected year-end deficit.
- (d) **Balanced Budget.** The operation and maintenance budget shall balance with the sewer use charge so that projected revenues equal projected expenditures.
- (e) **Composition of Revenues.** Revenues for the debt service budget can include any projected year-end balances in the special assessments funds, projected residential equivalency charges, connection charges, sinking fund interest income and property taxes.
- (f) **Debt Service Expenditures.** Expenditures for the debt service budget shall include principal, interest, premiums, paying agency fees and other expenses related to debt.
- (g) **Coverage of Debt Service Requirements.**
  - (1) The budget shall provide for the satisfaction of any debt service coverage requirements imposed by bond resolutions or ordinances relating to Sewerage System Revenue Bonds issued by the City, pursuant to Sec. 66.066, Wis. Stats. Unless otherwise provided in the bond resolution or ordinance, the budget shall provide that projected net revenues of the sewerage system (i.e., all revenues derived from operation of the system minus the costs of operation and maintenance of the system) shall be in an amount equal to no less than one hundred twenty-five percent (125%) of the principal and interest due in the fiscal year on all outstanding revenue bonds.
  - (2) The budget may also include amounts to be deposited into the debt service account(s) for general obligation bonds, notes, or certificates of indebtedness issued by the City to finance costs of the Sewerage System, in order to abate the taxes levied by the City to pay principal and interest on such bonds, notes, or certificates of indebtedness. The amount included in the budget to provide for payment of such general obligation debt shall equal the amount of the debt service taxes levied pursuant to the resolution authorizing the debt for the fiscal year to which the budget relates, reduced by any amount of such tax which the City intends to carry on the tax rolls in that fiscal year.
- (h) **Payment of Charges.** Sewer service charges may be billed monthly and shall be payable at the Water Utility office or at any other officially designated location. Statements for such charges and assessments levied and assessed in accordance with this Chapter shall become due and payable within twenty (20) days from and after the date of the statement. In the event that any such statement or statements are not paid within twenty (20) days of issuance, a charge of not more than one and one-half percent (1-1/2%) per month will be added to the

bill. This late payment charge shall be applied to the total unpaid balance for sewer service charges. This charge is applicable to all customers.

- (i) **Billing.** The property owner is held responsible for all sewer bills on premises that he owns. All sewer bills and notices of any nature, relative to the sewer service, will be addressed to the owner and/or occupant and delivered to the addressee by first-class mail.
- (j) **Failure to Receive Bill No Penalty Exemption.** Every reasonable care will be exercised in the proper delivery of sewer bills. Failure to receive a sewer bill, however, shall not relieve any person of the responsibility for payment of sewer rates within the prescribed periods, nor exempt any person from any penalty imposed for delinquency in the payment thereof.
- (k) **Delinquent Bills.** The Water Utility will attempt to collect delinquent sewer bills and, if unsuccessful, the balance will be placed on the tax rolls as a lien on the property pursuant to Sec. 66.60(16), Wis. Stats.

#### **SEC. 9-2-8 ACCOUNTS AND FUNDS.**

- (a) The operation and maintenance portion of the sewer user charge shall be used for payment of any items defined in Section 9-2-4(a)(18).
- (b) The debt service fund shall contain all revenues transferred from special assessments debt, connection charges, property taxes, residential equivalency charges, debt portion of the sewer user charge and other sources intended for debt. This fund shall be used only for the payment of principal and interest and fees directly related to debt payment.
- (c) The sewer rehabilitation and other collection capital improvement funds shall be used for the following purposes:
  - (1) Cost of the replacement of existing sewer mains.
  - (2) Cost of substitution of larger size for existing mains.
  - (3) Cost of new primary sewer mains and installation of same in excess of such charge or cost payable by statutory assessment.
  - (4) Cost of road repair required by such construction.
  - (5) Cost of contracted engineering service to insure a planned program.
  - (6) Renewals or expansion of the collection system in excess of Five Thousand Dollars (\$5,000.00).
- (d) Wastewater Treatment Facility Replacement Fund shall be used for capital improvement related to the Wastewater Treatment Facility and costs defined in Section NR 128.03(18), Wis. Adm. Code.

#### **SEC. 9-2-9 PROHIBITED DISCHARGES.**

- (a) No person shall discharge or cause to be discharged any storm water, ground water, roof runoff, yard drainage, yard fountain, swimming pool or pond overflow into the collection system. Unpolluted water or waste shall be discharged to only storm sewers or to a natural outlet. Clearwater discharges to the Sewerage System are regulated by the Municipal Code of the City of Cedarburg.

- (b) No person shall discharge or cause to be discharged to the collection system either directly or indirectly any of the following-described wastes or wastewater:
- (1) Any liquid having a temperature higher than one hundred fifty (150) degrees Fahrenheit [sixty-five (65) degrees Centigrade].
  - (2) Any wax, grease or oil, plastic or any other substance that will solidify or become discernibly viscous at temperatures between thirty-two (32) degrees to one hundred fifty (150) degrees Fahrenheit [zero (0) degrees to sixty-five (65) degrees Centigrade].
  - (3) Any solids, liquids or gases which, by themselves, or by interaction with other substances may cause fire, explosion, hazards, create toxic fumes or in any other way be injurious to persons or property involved in the operation or maintenance of the sewer system.
  - (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewer system such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
  - (5) Any garbage that has not been properly comminuted or shredded to such a degree that all particles will be carried freely in suspension in the municipal sewers. [One hundred percent 100% passing one-half (1/2) inch screen, ninety percent (90%) passing one-quarter (1/4) inch screen.]
  - (6) Any noxious or malodorous substance, whether either singly or by interaction with other substances is capable of causing odors objectionable to persons of ordinary sensitivity.
  - (7) Any wastes or wastewater having a pH lower than five and one-half (5.5) or higher than nine (9.0) or having any corrosive property capable of causing damage to hazards to the sewerage system.
  - (8) Any wastes or wastewater of such character and quantity that unusual attention or expense is required to handle them in the sewer system.
  - (9) Any wastewater or wastes containing a toxic or poisonous substance such as plating or heat-treating wastes in sufficient quantity to injure or interfere with wastewater treatment process, to constitute a hazard to humans or animals, to create any hazard in the sewerage system or which would cause the City Wastewater Treatment Facilities to discharge any of the following pollutants in quantities in excess of the limitations established in the Wisconsin Administrative Code or WPDES Permit: cyanide, hexavalent chromium, trivalent chromium, copper, nickel, cadmium, zinc, phenols, iron and tin.
  - (10) Any radioactive wastes greater than allowable releases as specified by the current United State Bureau of Standards Handbooks dealing with the handling and release of radioactivity.
  - (11) Free or emulsified oil and grease exceeding on analysis an average of one hundred

- (100) mg/l of either or both of combinations of free or emulsified oil and grease.
- (12) Any cyanides or cyanogen compounds capable of liberating hydrocyanic gas or acidification in excess of one-half (0.5) mg/l by weight as cyanide in the wastes.
- (13) Wastes or wastewater which:
- a. Cause unusual concentrations of solids or composition as, for example, in total suspended solids of inert nature (such as Fuller's earth) and/or in total dissolved solids (such as sodium chloride or sodium sulfate).
  - b. Cause excessive discoloration in the Wastewater Treatment Facilities discharge.
  - c. Has a total BOD or suspended solids loading in excess of the wastewater discharge permit described in Section 9-2-15.
  - d. Is discharged without application for a wastewater discharge permit or contractual agreement as required.
  - e. Cause damage to the collection system or impair the treatment process.
- (c) No person shall allow the discharge of slugs of water or wastes to the collection system which may be harmful to the operation of the Sewerage System. Where, in the opinion of the Superintendent, slugging does occur, each person producing such a discharge into the collection system shall construct and maintain at his own expense a storage reservoir of sufficient capacity with flow control equipment to insure an equalized discharge over a twenty-four (24) hour period.
- (d) No person shall discharge any waste or wastewater which would cause the wastewater treatment facilities to be in violation of any of the requirements of their WPDES permit.
- (e) No person shall connect to and discharge to the collection system, unless there is capacity available in all downstream components of the Sewerage System as determined by the Director of Engineering and Public Works.

#### **SEC. 9-2-10 ACCIDENTAL DISCHARGES.**

Any person who accidentally discharges wastes or wastewater prohibited under Section 9-2-9 into a storm sewer shall immediately report such discharge to the Superintendent.

#### **SEC. 9-2-11 PRETREATMENT FACILITIES.**

- (a) The Approving Authority may require pretreatment facilities of any person discharging or planning to discharge industrial waste, if the waste or wastewater could:
- (1) Cause damage to the collection system.
  - (2) Impair the treatment process.
  - (3) Cause the City to incur treatment costs exceeding those of domestic wastewater.
  - (4) Have any of the characteristics of the "Prohibited Discharges" described in Section 9-2-9 of this Chapter.
  - (5) Cause the Wastewater Treatment Facilities to exceed its total design loading for volume BOD, suspended solids or pollutant.

- (6) Cause a particular industry to exceed its design allocation for volume, BOD, suspended solids or any other pollutant.
- (b) Construction, operation and maintenance of pretreatment facilities shall be at the expense of the person discharging the industrial waste.
- (c) Plans, specification and any other pertinent information relating to proposed pretreatment facilities shall be submitted for review of the Superintendent and City prior to the start of construction.
- (d) In accordance with Chapter NR 114, Wis. Adm. Code, all pretreatment facilities shall be operated by qualified personnel holding certificate of the proper class issued by the Wisconsin Department of Natural Resources.

**SEC. 9-2-12 SAND AND GREASE TRAP INSTALLATIONS.**

Grease, oil and sand interceptors shall be provided at restaurants, repair garages, gasoline, stations, car washes and other industrial or commercial establishments for the proper handling of liquid wastes containing grease in excessive amounts, oil, flammable wastes, sand and other harmful ingredients. All interceptors shall be constructed in accordance with the Wisconsin Plumbing Code and shall be located as to be readily and easily accessible for any cleaning and inspection. All grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuous, efficient operation at all times.

**SEC. 9-2-13 WASTEWATER MEASUREMENT AND SAMPLING.**

Wastewater flows to users which do not obtain their water from the Water Utility shall be assigned a residential equivalent connection as determined from Section 9-2-19 unless:

- (a) The City requires the installation of a meter to measure the water amount.
- (b) Any lot, parcel of land, building or premises discharging domestic wastewater or industrial waste into the collection system, the owner or occupant of such property shall cause to be installed necessary metering equipment as approved by the Director of Engineering and Public Works to measure the quantity of water pumped or discharged to the collection system. The user charge shall be based on the quantity of water so measured. Whenever the person fails to install such metering equipment, or where it is not practicable to measure the water consumed on any premises by a meter or meters, the Director of Engineering and Public Works shall determine the estimated volume of water discharged into the sewer system.
- (c) The Director of Engineering and Public Works may require the installation of devices for metering the volume of waste discharged if those volumes cannot otherwise be determined or if the user discharges over five thousand (5,000) gallons on any day. The metering devices shall be owned and maintained by the property owner or user and may not be removed without consent of the Director of Engineering and Public Works.

**SEC. 9-2-14 INDUSTRIAL WASTE ANALYSIS, MEASUREMENT, AND SAMPLING.**

- (a) **Sampling and Metering Manholes.** All persons discharging industrial wastes into the sewer system shall construct and maintain sampling and metering manholes in suitable and accessible position on public property or easement to facilitate the observation, measurement and sampling of all wastes or wastewater. These manholes shall be located and constructed in a manner approved by the Director of Engineering and Public Works. Plans shall be submitted to the Director of Engineering and Public Works prior to construction.
- (b) **Tests.** The City or its designee will monitor flow, collect samples and perform laboratory tests on industrial waste discharges and septate discharges as necessary to verify quantity of flow and/or character and concentration of an industrial waste or septate. The City test results shall be used to determine the applicable surcharge.
- (c) **Sampling.** Waste or wastewater discharge may be sampled manually or by the use of mechanical equipment as necessary to obtain a representative twenty-four (24) hour composite sample. Samples shall be taken at intervals to be established by contractual agreement under Section 9-2-15 intervals as determined by the Superintendent or the Director of Engineering and Public Works.
- (d) **Testing Laboratory.** Sections NR 101 or NR 202, Wis. Adm. Code, require the submittal of the character and concentration of wastes, waste volume and production information to the District or Wisconsin Department of Natural Resources (DNR); the user shall have the waste character and concentration determined by a DNR-certified testing laboratory. A copy of the test results and DNR reports shall be submitted to the Superintendent and the Director of Engineering and Public Works.
- (e) **Testing Standards.** All measurements and test analysis of the characteristics of industrial wastes shall be determined in accordance with "Standard Methods."

## **SEC. 9-2-15 WASTEWATER DISCHARGE PERMIT SYSTEM.**

### **(a) Wastewater Discharge Permit.**

- (1) A wastewater discharge permit is required under this Section if a person's discharge into the City's Sewerage System has any of the following:
  - (a) A BOD greater than three hundred fifty (350) mg/L.
  - (b) A Suspended Solids concentration greater than two hundred fifty (250) mg/L.
  - (c) A TKN concentration greater than thirty (30) mg/L.
  - (d) A phosphorus concentration greater than ten (10) mg/L.
  - (e) A volume of five thousand (5,000) gallons per day or greater is discharged by any industrial user at one (1) or more points of discharge.
  - (f) Any of the characteristics listed under Section 9-2-9. (Ord. 90-31) (Ord. 95-12)
- (2) Any such persons planning to discharge, changing the characteristics of their discharge or whose discharge permit has expired shall make application to the City within sixty (60) days prior to the discharge. All persons discharging at the time of adoption of this ordinance or any amendment thereto that results in those persons being subject to the terms of the ordinance shall make application to the City within

sixty (60) days of notification by the City. Failure to make such application or to take such actions as necessary to satisfy the conditions of obtaining and retaining such permit shall make those persons ineligible to continue discharging. A discharge permit will be required for each separate point of discharge into the City's sewer system. No person shall discharge waste or wastewater into the City sewer system without a wastewater discharge permit, if required by the Section.

- (b) **Permit Application.** Users seeking a wastewater discharge permit shall file a nonrefundable filing fee in the amount of One Hundred Dollars (\$100.00) and complete and file with the City an application on the form prescribed by the City. In support of this application, the user shall submit the following information:
- (1) Name, address and standard industrial classification number of applicant.
  - (2) Average daily volume of wastewater to be discharged.
  - (3) Wastewater constituents and characteristics as determined by a method approved by the Director of Engineering and Public Works.
  - (4) Time and duration of discharge.
  - (5) Average and peak wastewater flow rates, including daily, monthly and seasonal variations, if any.
  - (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers and appurtenances by size, location and elevation.
  - (7) Description of activities, facilities and plant processes on the premises, including all materials and types of materials which are, or could be, discharged.
  - (8) Each product produced by type, amount and rate of production.
  - (9) Number and type of employees and hours of work.
  - (10) Any other information as may be deemed by the City to be necessary to evaluate the permit application.
- (c) **Permit Conditions.** Wastewater discharge permits shall be expressly subject to all provisions of this Chapter and all other regulations, user charges and fees established by the Approving Authority. The conditions of wastewater discharge permits shall be uniformly enforced by the City in accordance with this Chapter and applicable state and federal regulations. Permit conditions will include the following:
- (1) The residential equivalency charge, sewer use charge and schedule for surcharge fees for the wastewater to be discharged to the sewer system.
  - (2) The average and maximum wastewater constituents and characteristics.
  - (3) Limits on rate and time of discharge or requirements for flow regulations and equalization.
  - (4) Requirements for installation of sampling and metering manholes or discharging monitoring stations.
  - (5) Pretreatment requirements.
  - (6) Requirements for maintaining plant records relating to wastewater discharges as specified by the Superintendent, and affording the City access thereto.
  - (7) Average and maximum pollutant concentrations and total daily average and maximum pollutant discharges for all pollutants subject to limitations and

- prohibitions which are present in the user's wastewater discharge.
- (8) All persons required to make application for a wastewater discharge permit shall, before issuance of the permit, enter into a contractual agreement with the City. The contractual agreement shall contain the conditions set forth in the discharge permit, requirements for industrial cost recovery charges and other items deemed necessary by the Approving Authority.
- (9) Other conditions as deemed appropriate by the City to insure compliance with this Chapter.
- (d) **Duration of Permits. Fees and Penalties**
- (1) A permit shall be issued for one (1) year and shall be automatically renewed on a year-to-year basis thereafter, unless the person is notified by the City within sixty (60) days prior to the expiration of the permit or any renewal thereof or unless the discharger has signed a discharge monitoring agreement with the City which specifies a different duration period. After such notification by the City, the permit shall expire on the end of that year. The terms and conditions of the permit shall be subject to modification and change by the City during the life of the permit, if so required because of any ordinances, statutes or rules and regulations of the Approving Authority or any applicable state or federal body. The person shall be informed of any proposed changes in his permit at least sixty (60) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance. (Ord. 90-31)
- (2) At the time of application for a permit by any person who first becomes subject to the requirements of this ordinance after November 1, 1990, that person shall pay a \$100.00 fee to defray administrative costs occasioned thereby. Such a \$100.00 fee shall also be paid by any person whose permit requires modification or change by the City during the life of the permit pursuant to Subsection (d)(1) hereof. Any person who fails to comply with the requirements of this ordinance within sixty (60) days of notice that the ordinance is applicable to said person shall be subject to a \$200.00 forfeiture which shall be enforceable citation as provided in this municipal code. Each day that such non-compliance shall be considered a separate violation. (Ord. 90-31)
- (e) **Transfer of a Permit.** Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises or a new or changed operation.
- (f) **Revocation of Permit.** Any user who violates any of the conditions of his Permit contractual agreement, or this Chapter, or of applicable state and federal regulations is subject to having his permit revoked.
- (g) **Discharge Monitoring Agreement.** The City may require an industry or any high volume or high strength waste discharger to enter into a discharge monitoring agreement if, in the judgment of the Director of Engineering and Public Works, such an agreement is necessary to properly evaluate the users discharge to the Sewerage System and/or to obtain adequate

information to properly assess a surcharge. In the absence of a discharge monitoring agreement, the Director of Engineering and Public Works may assign a surcharge to a user which, in the Director of Engineering and Public Work's judgment, is appropriate for the user's discharge. The City may assess a surcharge to a user even though the City does not require the user to enter into a discharge monitoring agreement. A sample of a discharge monitoring agreement is on file with the Director of Engineering and Public Works.

**SEC. 9-2-16 ADMISSION TO PROPERTY.**

The City shall be permitted to gain access to such properties as may be necessary for the purpose of inspection, observation, measurement, sampling and testing it, in accordance with provisions of this Chapter.

**SEC. 9-2-17 CONFIDENTIALITY OF CRITICAL INFORMATION.**

When requested by the user furnishing a report or permit application or questionnaire, the portions of the report or other document which might disclose trade secrets or secret processes shall not be made available for use by the City or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

**SEC. 9-2-18 VIOLATIONS.**

- (a) Any person who fails to comply with any of the provisions of this Chapter or with an order of the Approving Authority issued in pursuance of this Chapter or tampers with metering or sampling shall be liable to the City for any expense, loss or damage occasioned by such violation, including reasonable attorneys' fees and other expenses of litigation and, upon conviction of any violation of this Chapter, shall be fined not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) per violation, plus damages. Each day a condition is allowed to exist which is contrary to all or any part of this Chapter shall constitute a new violation. Change of ownership or occupancy of premises delinquent under the provisions of this Chapter shall not be cause for reducing or eliminating charges due and penalties for violations.
- (b) If any user shall discharge a waste or wastewater, including septate that is inhibiting to the sewer system or wastewater treatment facility, said user shall pay a penalty of up to Two Hundred Dollars (\$200.00) per violation upon conviction. Each day a violation occurs shall constitute a separate violation. Said penalty shall be added to the monthly or quarterly billing statement if not paid within thirty (30) days of conviction or such other time as set by the court.
- (c) In addition to the court proceedings and penalties described in the foregoing sections of this Chapter, whenever a person violates any provision of this Chapter or fails to comply with any order of the Approving Authority, the Approving Authority may order that an action be commenced on behalf of the City in the Circuit Court for Ozaukee County for the purpose of

obtaining an injunction restraining the person violating the ordinance or failing to comply the order from making any further discharges into the sewer system of the City.

- (d) Any licensed disposer discharging to the Wastewater Treatment Facility or to a public sewer found to be violating a provision of this Chapter or of any conditions of the approval for septate disposal may have their approval immediately revoked. This revocation shall be done in writing and state the reason for revoking the septate disposal approval.

**SEC. 9-2-19 RESIDENTIAL EQUIVALENT CONNECTION TABLE  
AND UNMETERED WASTEWATER FLOW ASSIGNMENTS.**

- (a) For unmetered users of the sewerage system, the following table shall be used to determine the Residential Equivalent Connection (REC) or estimated gallons of wastewater discharged to the sewerage system, except as provided for in Section 9-2-13:

<u>Residential Users</u>	<u>REC</u>
Condominium	1.0
Single-family home	1.0
Duplex	2.0
Multiple-family [two (2) bedrooms]	1.0/unit
Multiple-family [one (1) bedroom or less]	0.75/unit

- (b) For unmetered commercial and industrial users of the sewerage system, their wastewater flow shall be determined from the following table unless the Director of Engineering and Public Works determines that the information in the tables does not accurately reflect the users' wastewater discharge to the Sewerage System, in which case the Director of Engineering and Public Works will assign a wastewater flow to the user. The REC may be determined by dividing the wastewater flow obtained from the table by the flow of the average residential user:

<u>SIC CODE</u>	<u>DESCRIPTION</u>	<u>GALLONS PER EMPLOYEE HOUR</u>
0742	Veterinary Services for Animal Specialties	20.0
0752	Animal Specialty Services	16.0
0782	Lawn and Garden Services	10.0
1446	Industrial Sand	5.0
1521	General Contractors -- Residential	2.3
1541	General Contractors -- Industrial Buildings and Warehouses	2.3
1611	General Contractors -- Public Works	2.3
1711	Plumbing, Heating and Air Conditioning	2.3

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1731	Electrical Work	2.3
1761	Roofing and Sheet Metal Work	2.3
1799	Special Trade Contractors, N.E.C.	2.3
2013	Sausage and Other Prepared Meats	110.0
2065	Candy and Other Confectionery Products	50.0
2087	Flavoring Extracts and Syrups, N.E.C.	75.0
2394	Canvas and Related Products	2.3
2431	Millwork	5.0
2434	Wood Kitchen Cabinets	5.0
2522	Metal Office Furniture	2.3
2721	Periodicals: Publishing and Printing	10.0
2731	Books: Publishing and Printing	10.0
2751	Commercial Printing, Letterpress and Screen	10.0
2752	Commercial Printing, Lithographic	10.0
2789	Bookbinding and Related Work	10.0
2795	Lithographic Platemaking and Related Services	25.0
2819	Industrial Inorganic Chemicals, N.E.C.	10.0
2834	Pharmaceutical Preparations	10.0
2841	Soap and Other Detergents	15.0
2893	Manufacturing of Printing Ink	30.0
2899	Chemicals and Chemical Preparations, N.E.C.	10.0
3079	Miscellaneous Plastics Products	85.0
3111	Leather Tanning and Finishing	345.0
3272	Concrete Products, Except Block and Brick	35.0
3273	Ready-Mixed Concrete	90.0
3293	Gaskets, Packings and Sealing Devices	2.3
3325	Steel Foundries, N.E.C.	115.0
3341	Secondary Smelting and Refining of Nonferrous Metals	2.7
3441	Fabricated Structural Metal	25.0
3442	Metal Doors, Sash, Frames, Molding and Trim	2.3
3444	Sheet Metal Work	40.0
3451	Screw Machine Products	10.0
3462	Iron and Steel Forgings	5.0
3469	Metal Stampings, N.E.C.	5.0
3471	Electroplating, Plating, Polishing, Anodizing, etc.	50.0
3479	Coating, Engraving and Allied Services, N.E.C.	100.0
3495	Wire Springs	2.3
3498	Fabricated Pipe and Fittings	2.3

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3499	Fabricated Metal Products, N.E.C.	25.0
3531	Construction Machinery and Equipment	5.0
3544	Spec. Dies and Tools, Die Sets, Jigs and Fixtures, Molds	10.0
3562	Ball and Roller Bearings	5.0
3565	Industrial Patterns	5.0
3569	General Industrial Machinery and Equipment, N.E.C.	4.0
3576	Scales and Balances, Except Laboratory	2.3
3599	Machinery, Except Electrical, N.E.C.	10.0
3613	Switchgear and Switchboard Apparatus	5.0
3632	Household Refrigerators and Home and Farm Freezers	2.3
3694	Electrical Equipment for Internal Combustion Engines	2.3
3714	Motor Vehicle Parts and Accessories	75.0
3999	Manufacturing Industries, N.E.C.	2.3
4141	Local Passenger Transportation Charter Service	2.3
4151	School Buses	2.3
4212	Local Trucking Without Storage	10.0
4213	Trucking, Except Local	2.3
4225	General Warehousing and Storage	2.3
4311	U.S. Postal Service	2.3
4722	Travel Agency	2.3
4811	Communication	2.3
4832	Radio Broadcasting	2.3
5042	Toys and Hobby Goods and Supplies	2.3
5063	Electrical Apparatus and Equipment	2.3
5064	Electrical Appliances	2.3
5072	Hardware -- Wholesale Distribution	2.3
5082	Construction and Mining Machinery and Equipment	2.3
5084	Industrial Machinery and Equipment	2.3
5142	Frozen Foods	10.0
5149	Wholesale Groceries and Related Products, N.E.C.	10.0
5199	Wholesale Non-Durable Goods, N.E.C.	10.0
5211	Lumber and Other Building Materials Dealers	2.3
5231	Paint, Glass, Wallpaper	2.3
5251	Hardware Retail Sales	2.3
5261	Retail Nurseries, Lawn and Garden Supply Stores	10.0

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5271	Mobile Home Dealers	2.3	
5311	Department Stores	2.3	
5331	Variety Stores	2.3	
5411	Grocery Stores with Meat and Produce Departments	16.0	
5412	Grocery Stores without Meat and Produce Departments	6.0	
5441	Candy, Nut and Confectionery Stores		10.0
5462	Retail Bakeries -- Baking and Selling		10.0
5499	Miscellaneous Food Stores	2.3	
5511	Motor Vehicle Dealers	5.0	
5531	Auto and Home Supply Stores	2.3	
5541	Gasoline Service Stations	15.0	
5551	Boat Dealers	5.0	
5611	Clothing Stores	2.3	
5661	Shoe Stores	2.3	
5681	Furriers and Fur Shops	5.0	
5711	Furniture, Floor Coverings, Appliances	2.3	
5812	Eating Places (Restaurants)	20.0	
5813	Drinking Places (Taverns)	45.0	
5912	Drug Stores and Proprietary Stores	2.3	
5921	Liquor Stores	2.3	
5931	Used Merchandise Stores	2.3	
5941	Sporting Goods Stores and Bicycle Shops	2.3	
5942-9	Miscellaneous Stores	2.3	
5992	Florists	10.0	
5999	All Other Retail Stores	2.3	
6022-59	Banks	2.3	
6122-63	Savings and Loans	2.3	
6311	Insurance Companies	2.3	
6411	Insurance Agents	2.3	
6512	Operators of Nonresidential Buildings	2.3	
6515	Operators of Residential Mobile Home Sites	2.3	
6531	Real Estate Agents and Managers	2.3	
6553	Cemetery Subdividers and Developers	2.3	
6722	Management Investment Offices	2.3	
7211	Power Laundries, Family and Commercial	105.0	
7212	Cleaning and Laundry Pick-up Stations	2.3	
7215	Factory Coin-Op Laundries and Dry Cleaning	910.0	
7221	Photographic Studios	2.3	
7231	Beauty Shops	16.0	
7241	Barber Shops	10.0	

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7261	Funeral Service and Crematories	15.0	
7299	Miscellaneous Services, N.E.C.	2.3	
7311	Advertising Agencies, Employment Services		2.3
7332	Blueprinting and Photocopying Services	2.3	
7361	Employment Agencies	2.3	
7391	Research and Development Laboratories	10.0	
7395	Photofinishing Labs	10.0	
7512	Passenger Car Rental and Leasing, Without Drivers	10.0	
7531	Top and Body Repair Shop	5.0	
7534	Tire Retreading and Repair Shops	20.0	
7538	General Automotive Repair Shops	5.0	
7542	Car Washes	115.0	
7622	Radio and Television Repair	2.3	
7699	Repair Shops and Related Services, N.E.C.	2.3	
7832	Motion Picture Theatres, not Drive-Ins	20.0	
7911	Dance Halls, Studios and Schools	20.0	
7922	Theatrical Producers	20.0	
7933	Bowling Alleys	50.0	
7992	Public Golf Courses	45.0	
7997	Membership Sports and Recreation Clubs	75.0	
7999	Roller Rinks, Gymnasiums, Museums	20.0	
8011	Offices of Physicians	10.0	
8021	Offices of Dentists	10.0	
8031	Offices of Osteopaths	10.0	
8041	Offices of Chiropractors	10.0	
8051	Skilled Nursing Care Facilities	20.0	
8091	Health and Allied Services, N.E.C.	10.0	
8111	Attorneys	2.3	
8211	Elementary and Secondary Schools	20.0	
8221	Colleges, Universities and Professional Schools	25.0	
8231	Libraries and Information Centers	20.0	
8249	Vocational Schools, N.E.C.	20.0	
8421	Arboreta, Botanical and Zoological Gardens	45.0	
8621	Professional Membership Organizations	2.3	
8641	Civic, Social and Fraternal Associations	15.0	
8661	Religious Organizations (hours occupied only)	20.0	
8699	Membership Organizations, N.E.C.	2.3	
8911	Engineering, Architectural and Surveying Services	2.3	
8931	Accountants	2.3	
9199	General Government, N.E.C.	2.3	

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9221	Police Protection	2.3
9224	Fire Protection	2.3
9451	Administration of Veterans' Affairs	2.3
9999	All Offices,N.E.C.	2.3

NOTE: Parsonages should be regarded as single-family residences.

### CHAPTER 3

#### Cable Television (Ord. No. 97-17)

9-3-1	Purpose of Chapter
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9-3-44	General

**SEC. 9-3-1 PURPOSE OF CHAPTER.**

The purpose of this Chapter is to authorize the City of Cedarburg to grant a non-exclusive franchise to one or more Grantees to install, maintain, and operate within the City a cable television system for the distribution of television signals, frequency-modulated radio signals and any other electronic signals capable of being transmitted on a coaxial or fiber optic network including data transmission and closed circuit television programs, provided that the Grantee conforms to the conditions, limitations, and requirements of this Chapter.

**SEC. 9-3-2 SHORT TITLE.**

This Chapter shall be known and may be cited as the “Cedarburg Cable Television Franchise Ordinance of 1997.”

**SEC. 9-3-3 DEFINITIONS.**

For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

- (a) **Basic Service.** Any service tier which includes, at a minimum, all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station), any public, educational, and governmental programming required by the franchise, and any additional video programming signals or service added to the tier by the Grantee.
- (b) **Cable Act.** Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 151, et seq., and all other provisions of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104.
- (c) **Cable Operator.** Any person or group of persons who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such a cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
- (d) **Cable Service.** The one-way transmission to subscribers of video programming, or other

- programming service; and, subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (e) **Cable Television System, Cable System, or System.** Any facility owned by a cable operator consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (i) a facility that services only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any public right-of-way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, 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; (iv) an open video system that complies with Section 653 of the Cable Act, including any amendments thereto; or (v) any facilities of any electric utility used solely for operating its electric utility systems.
  - (f) **Channel.** A portion of the electromagnetic frequency spectrum, or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a video signal, an audio signal, a voice signal, or a data signal or any other electronic signal.
  - (g) **City.** The City of Cedarburg, Wisconsin or any duly appointed designee thereof, including, but not limited to, the City Council.
  - (h) **City Council.** The present governing body of the City or any successors to the legislative power of said body or any duly appointed designee thereof.
  - (i) **Control.** The power or authority to direct or cause the direction of the management and policies of the Grantee.
  - (j) **Converter.** An electronic device that will shift any television channel(s) from one to another within the UHF or VHF frequency spectrum.
  - (k) **Cost-of-Service Showing.** A rate filing in which the Grantee seeks to justify a rate above the FCC's reasonable rate standard.
  - (l) **Dwelling Unit.** A building or that part of a building used as a home or residence.
  - (m) **Extended Basic Service.** Any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than: (i) video programming carried on the basic service tier; (ii) video programming offered on a pay-per-channel or pay-per-program basis; or (iii) a combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service consists of commonly-identified video programming and is not bundled with any regulated tier of service.
  - (n) **FCC.** The Federal Communications Commission, its designee, or any successor thereto.
  - (o) **Franchise.** An initial authorization, or renewal thereof issued by the City, as franchising authority, to a Grantee to construct or operate a cable system.
  - (p) **Franchise Agreement.** A contractual agreement entered into between the City and any

- Grantee hereunder which is enforceable by the City and said Grantee and which sets forth the rights and obligations between the City and said Grantee in connection with the franchise.
- (q) **Franchise Fee.** Any tax, fee, or assessment the City imposes on the Grantee solely because of the Grantee's status as such. The term "franchise fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax for or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against the Grantee); (ii) capital costs which are required by the franchise to be incurred by Grantee for educational or governmental access facilities; (iii) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under Title 17, United States Code.
  - (r) **Grantee.** A person to whom a franchise under this Chapter is granted and the lawful successors or assigns of such person.
  - (s) **Gross Revenues.** Any and all revenues derived directly or indirectly by a Grantee, its affiliates, subsidiaries, parents, or any person in which the Grantee has a financial interest from or in connection with the operation of the cable system pursuant to this Chapter. Further, annual gross revenues includes compensation in whatever form, derived from all cable services, cable operations, and cable-related activities within the franchise area including, but not limited to, (i) revenues from subscriber rates, pay television, premium channels, service tiers, service clusters, institutional networks, on-air advertising, installations, reconnections, or similar fees; (ii) rebates or commissions received from travel, home shopping or similar services, or commercial access; and (iii) any, and all, compensation from all ancillary cable services, cable operations, and cable-related activities within the franchise area.
  - (t) **Normal Business Hours.** Those hours during which similar businesses in the City are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and some weekend hours.
  - (u) **Normal Operating Conditions.** Those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
  - (v) **Person.** Any natural person or any association, firm, partnership, joint stock company, limited liability company, joint venture, corporation, or other legally recognized entity, private or public, whether for-profit or not-for-profit.
  - (w) **Public, Educational, or Governmental Access Facilities.** Channel capacity designated for public, educational, or governmental use and the facilities and equipment for the use of such channel capacity.
  - (x) **Service Tier.** A category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.

- (y) **Street.** The surface of and space above and below any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway or drive, or any public right-of-way, now or hereafter existing as such within the City.
- (z) **Subscriber.** Any person legally receiving any service provided by a Grantee pursuant to this Chapter.
- (aa) **Video Programming.** Programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

#### **SEC. 9-3-4 GRANT OF FRANCHISE.**

- (a) **Grant.** In the event the City shall grant to a Grantee or renew a nonexclusive, revocable franchise to construct, operate, maintain and reconstruct a cable system within the franchise area, said franchise shall constitute both a right and an obligation to provide the service of a cable system as required by this Chapter and by the terms of the Franchise Agreement.
- (b) **Franchise Required.** Subject to federal and state law, no cable operator shall be allowed to occupy or use the streets within the incorporated limits of the City without a franchise granted in accordance with the provisions of this Chapter.
- (c) **Franchise Nonexclusive.** Any franchise granted under this Chapter shall be revocable and nonexclusive. The City reserves the right to grant a similar franchise to any person at any time.
- (d) **Revisions.** Any franchise granted under this Chapter is hereby made subject to any revisions of this Chapter and the general ordinances of the City, provided that such revisions do not materially and adversely alter the Grantee's obligations or impair the Grantee's rights set out in any Franchise Agreement.
- (e) **Term.** The term of any new or renewal franchise granted under this Chapter shall be established in the Franchise Agreement; provided, however, that in no event shall any franchise granted under this Chapter exceed the term of fifteen (15) years.
- (f) **Mortgage or Pledge of System.** Nothing in this Chapter shall be deemed to prohibit a Grantee from mortgaging or pledging of its system or any part thereof. However, any such mortgage or pledge shall be subject to and subordinate to the right of the City under this Chapter, any Franchise Agreement or applicable laws.
- (g) **Previous Rights Abandoned.** The franchise shall be in lieu of any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled or exercisable by the Grantee or any successor pertaining to the construction, operation, maintenance or reconstruction of a cable system in the City. The acceptance of the franchise shall operate, as between the Grantee and the City, as an abandonment of any and all of such rights, privileges, powers, immunities and authorities within the City. All construction, operation, maintenance and reconstruction by the Grantee of any cable system in the City shall be under this Chapter and the Franchise Agreement and not under any other right, privilege, power, immunity or authority.
- (h) **Subject to Other Regulatory Agencies Rules and Regulations.** The Grantee shall at all times during the life of the franchise be subject to all lawful exercise of the police power by

the City and other duly authorized regulatory state and federal bodies and shall comply with any and all codes which the City has adopted or shall adopt applying to the public generally and to other Grantees.

- (I) **Pole Use Agreements Required.** The franchise shall not relieve the Grantee of any obligation involved in obtaining pole- or conduit-use agreements from the gas, electric and telephone companies, or others maintaining poles or conduits in the streets of the City, whenever the Grantee finds it necessary to make use of such poles or conduits.
- (j) **No Right of Property.** Anything contained herein to the contrary notwithstanding, the franchise shall not impart to the Grantee any right of property in or on City-owned property.
- (k) **Use of Grantee's Facilities.** The City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of the Grantee, any wires and fixtures desired by the City to the extent that such installation and maintenance does not interfere with existing and future operations of the Grantee.
- (l) **Franchise Binding.** Anything contained herein to the contrary notwithstanding, all provisions of this Chapter shall be binding upon the Grantee, its successors, lessees or assignees.

#### **SEC. 9-3-5 APPLICATION.**

- (a) **Application.** All applicants for a franchise under this Chapter shall prepare and file a written application with the City in such form as the City shall designate.
- (b) **Franchise Renewal Applicants.** All applicants seeking to renew a franchise under this Chapter shall seek such renewal in accordance with the Cable Act.
- (c) **Review of Application.** Upon receipt of an application under this Chapter, the City shall review the same and make the application available for public inspection at such places as the City shall designate. A decision shall be made on the application by the City after evaluation thereof. The City may grant one (1) or more franchises, or may decline to grant any franchise.

#### **SEC. 9-3-6 FRANCHISE RENEWAL.**

- (a) **Renewal Request.** The City shall determine whether to renew a franchise granted under this Chapter in the event that the Grantee files a written request for such a renewal. The Grantee shall submit such a request at least thirty (30) -- but no sooner than thirty-six (36) -- months, before the expiration of the franchise. At the time of such request, the City may revise this Chapter, reevaluate the needs of the community for cable service, and review the performance of the Grantee. The City shall conduct any proceedings necessary to consider the renewal request.
- (b) **Renewal Criteria Where Cable Act Applies.** To the extent applicable, the Cable Act shall govern the procedures and standards for renewal of any franchise awarded pursuant to this Chapter. Accordingly, the City shall renew or extend a franchise unless it finds that:
  - (1) The Grantee has not substantially complied with the material terms of this

- Chapter, the Franchise Agreement, or with applicable law, or its officers have been convicted of a felony;
- (2) The quality of the Grantee's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been unreasonable in light of community needs;
  - (3) The Grantee lacks the legal, technical, or financial ability to provide the services, facilities, and equipment it proposes to provide;
  - (4) The service, facilities, and equipment the Grantee proposes to provide are unreasonable in light of the community need for and cost of such services, facilities, and equipment; or
  - (5) The proposals contained in the renewal application are otherwise unreasonable.
- (c) **Renewal Where Cable Act Does Not Apply.** To the extent that the Cable Act is not applicable, the City in its sole discretion and judgment shall have the right to grant, deny or conditionally grant renewal of a franchise, provided that the City shall not unreasonably refuse to renew the franchise or unreasonably condition the renewal. The conditions the City may place on its approval shall include, but are not limited to: remedy of historical or existing violations of the franchise or ordinance; payment of all fees and penalties owed by the Grantee at the time of the renewal; acceptance of any updated ordinance; and acceptance of any updated Franchise Agreement.

#### **SEC. 9-3-7 REVOCATION.**

- (a) **City's Right to Revoke and Grounds Therefore.** In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel any franchise granted under this Chapter, in the event that one or more of the following occur, each of which shall be deemed a material breach of the franchise:
- (1) The Grantee violates any material provision of this franchise or its Franchise Agreement with the City; or
  - (2) The Grantee violates any state or federal law applicable to the Grantee's operation within the City; or
  - (3) The Grantee practices any fraud or deceit upon the City or a subscriber; or
  - (4) The Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt; or
  - (5) The Grantee ceases to provide service over the cable system for a period exceeding fourteen (14) days for any reason within the Grantee's control or abandons the management and/or operation of the system; or
  - (6) The Grantee materially misrepresents a fact in the application for or negotiation of, or renegotiation of, or renewal of, its franchise.
- (b) **Notice and Opportunity to Cure Prior to Revocation.** In the event that the City

determines that the Grantee has committed a material breach of the franchise, the City may make a written demand on the Grantee that the Grantee cure such breach and inform the Grantee that continued breach may be cause for revocation. If the breach is not cured to the satisfaction of the City within thirty (30) days following such demand, the City may revoke the Grantee's franchise and terminate the Franchise Agreement pursuant to the revocation procedures set out in Section 8.

- (c) **Notice and Opportunity for Hearing.** The City shall not revoke any franchise without giving the Grantee reasonable notice and opportunity for a public hearing before the City Council.
- (d) **Revocation Resolution.** In the event that the City determines to revoke a Grantee's franchise under this Section, the City shall, by resolution, declare that the Grantee's franchise is terminated and any security fund and bonds forfeited and shall undertake the revocation procedures set out in Section 8.

#### **SEC. 9-3-8 PROCEDURES ON REVOCATION OR TERMINATION.**

- (a) **Removal of Facilities/Continued Operation.** In the event that a Grantee's franchise is revoked, expires, or is otherwise terminated, the City may order the Grantee to remove its facilities from the franchise area within ninety (90) days of the date of such order, or the City may require the Grantee to continue operating its cable system for a period not to exceed twenty-four (24) months as indicated in Subsection (d) below.
- (b) **Restoration of Property.** In removing its facilities from the franchise area, the Grantee shall refill, at its own expense, any excavation it makes and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its facilities without affecting the electrical or telephone cables, wires, or attachments. The Grantee's insurance, indemnity obligations, performance bond(s) and security fund(s) required by this Chapter and by the Franchise Agreement shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this Section.
- (c) **Restoration by City, Reimbursement of Costs.** If the Grantee fails to complete any work required by Subsections (a) and/or (b) above, or any other work required by the City within thirty (30) days after receipt of written notice, and to the satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City for the cost thereof within thirty (30) days after receipt of an itemized list of such costs, or the City may recover such costs through the security fund or bonds provided by Grantee. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.
- (d) **Extended Operation.** Subject to federal, state and local law, upon either the expiration or revocation of a franchise, the City may require the Grantee to continue to operate the cable system for a defined period of time not to exceed twenty-four (24) months from the date of such expiration or revocation. The Grantee shall, as trustee for its successor in interest, continue to operate the cable system under the terms and conditions of this Chapter and the Franchise Agreement and to provide the regular cable service and any of the other services

that may be provided at that time.

**SEC. 9-3-9 OTHER REMEDIES.**

- (a) **Lesser Remedies.** Nothing shall prohibit the City from invoking lesser remedies than revocation for violations of the provisions of this Chapter or the Franchise Agreement, including imposing monetary damages as set out in Subsection (c) below.
- (b) **Notice and Opportunity to Cure Prior to Imposition of Monetary Damages.** In the event that the City determines that the Grantee has failed to perform any material obligation under this Chapter or the Franchise Agreement, the City may make a written demand on the Grantee that the Grantee cure such breach and inform the Grantee that continued breach may be cause for the imposition of monetary damages. If the breach is not cured to the satisfaction of the City within thirty (30) days following such demand, the City may impose monetary damages on the Grantee as set out in Subsection (c) with an aggregate maximum penalty of ten thousand dollars (\$10,000).
- (c) **Monetary Damages.** If after notice to the Grantee and opportunity for hearing, the City determines that the Grantee has failed to perform any material obligation under this Chapter or the Franchise Agreement, or fails to do so in a timely manner, the City may at its option, and in its sole discretion assess monetary damages against the Grantee as provided in this Subsection (c). This provision for assessment of damages is intended to be separate and apart from the City's right to enforce the provisions of the construction and performance bonds provided for in this Chapter and is intended to be in addition to any other remedies. This provision is intended to provide compensation to the City for actual damages.
  - (1) For failure to substantially complete Cable System upgrade in accordance with this Ordinance and the Franchise Agreement unless the City approves the delay, or unless such delay was unavoidable under Section 44(f), the amount shall be five hundred dollars (\$500) per day.
  - (2) For failure to obtain a permit where construction, reconstruction, or relocation of the Cable System or its components within the rights-of-way of the City is undertaken, the amount shall be fifty dollars (\$50) per day.
  - (3) For failure to comply with construction, operation, or maintenance standards, the amount shall be one hundred dollars (\$100) per day.
  - (4) For failure to provide customer services as stated in Section 20 of this Ordinance, the amount shall be one hundred dollars (\$100) per day.
  - (5) For failure to test, analyze, and report on the performance of the Cable System following a request by the City, the amount shall be one hundred dollars (\$100) per day.
  - (6) For failure to provide data, documents, reports, or information, or to cooperate with the City during a performance review of the Cable System or during a Franchise Fee audit or agreed upon procedures evaluation, the amount shall be fifty dollars (\$50) per day.
  - (7) For failure to submit timely reports as required under this Ordinance or the Franchise

Agreement, the amount shall be fifty dollars (\$50) per day until such reports are received by the City.

- (8) For failure to comply with the material provisions of this Ordinance for which an amount is not otherwise specifically provided for pursuant to this Section, the amount shall be one hundred dollars (\$100) per day.

#### **SEC. 9-3-10 PURCHASE OF SYSTEM BY CITY.**

- (a) **Purchase of System by City on Revocation.** If the City revokes the franchise for cause, the Grantee shall first offer the system for sale to the City at an equitable price under the following procedures:
  - (1) If the determination of an equitable price cannot be negotiated or determined by the City and the Grantee, the price shall be determined by an impartial appraisal procedure pursuant to Ch. 788, Wis. Stats., wherein the Grantee and the City shall each choose an appraiser, and the appraisers chosen shall choose a third appraiser and the price determined by such appraisers shall be considered the equitable price at which the system will be offered to the City. The determination of the price of the system shall be decreased by the amount of any and all damages sustained by the City in connection with revocation, including without limitation, payment made by the City to another person or entity to operate the system for a temporary period after revocation. The cost of the appraisal procedure shall be shared equally by the City and the Grantee.
  - (2) The City shall have ninety (90) days commencing on the day the equitable price of the system is determined either through negotiation or the appraisal procedure to exercise its option to purchase. If the City does not exercise its option to purchase, and the system is not sold to another operator who has obtained a franchise from the City, the Grantee, upon request by the City, shall promptly remove all its facilities from the franchise area. While transfer of the system and franchise is being negotiated, arranged or ordered, the Grantee may be required to continue service to the public.
- (b) **Purchase of System by City on Nonrenewal.** If the City determines not to renew a Grantee's franchise, the Grantee shall first offer the system for sale to the City at fair market value, determined on the basis of the system valued as a going concern but with no value allocated to the franchise itself. The following procedures shall be followed:
  - (1) If the determination of fair market value cannot be negotiated or determined, the value shall be determined by an impartial appraisal procedure pursuant to Ch. 788, Wis. Stats., wherein the Grantee and the City shall each choose an appraiser and the appraisers chosen shall choose a third appraiser and the valuation determined by such appraisers shall be considered the fair market value at which the system will be offered to the City. The determination of the value of the system shall be decreased by the amount of any damages sustained by the City in connection with nonrenewal, including without limitation, payment made by the City to another person or entity to

operate the system for a temporary period after nonrenewal. The cost of the appraisal procedure shall be shared equally by the City and the Grantee.

- (2) The City shall have ninety (90) days commencing on the day the fair market value of the system is determined either through negotiation or the appraisal procedure to exercise its option to purchase. If the City does not exercise its option to purchase, and the system is not sold to another operator who has obtained a franchise from the City, the Grantee, upon request by the City, shall promptly remove all its facilities. While transfer of the system and franchise is being negotiated, arranged or ordered, the Grantee may be required to continue service to the public.

### **SEC. 9-3-11 TRANSFER OF OWNERSHIP OR CONTROL.**

- (a) **Transfer of Franchise.** Any franchise granted under this Chapter shall be a privilege to be held for the benefit of the public. Any franchise so granted cannot, in any event, be sold, transferred, leased, assigned or disposed of by any method, including, but not limited to, forced or voluntary sale, merger, or consolidation, either in whole or in part, without the prior written consent of the City, and then only under such reasonable conditions as the City may establish. Such consent as required by the City, shall be given or denied no later than one hundred twenty (120) days following any request, and shall not be unreasonably withheld. Prior consent shall not be required when transferring the franchise between wholly-owned subsidiaries of the same entity.
- (b) **Notice to City on 20% Change of Ownership or Control.** A Grantee shall promptly notify the City in writing of any proposed change in, or transfer of, control of the Grantee. For the purpose of this Subsection, a change in, or transfer of, control shall occur on the acquisition or transfer by any person of twenty percent (20%) or more of the beneficial ownership interest in the Grantee.
- (c) **Consent of City Required on 51% Change of Ownership or Control.** In the event that any person or group of persons acquires or transfers fifty one percent (51%) or more of the beneficial ownership interest in the Grantee, Grantee's franchise shall be subject to cancellation unless and until the City shall have consented in writing to the acquisition or transfer. The City shall give or deny consent no later than one hundred twenty (120) days after receiving written notice of the acquisition or transfer. The City's consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the City may inquire into the qualifications of the prospective controlling party, and the Grantee shall assist the City in any such inquiry.
- (d) **Grantee's Responsibility.** In seeking the City's consent to any change in ownership or control, the Grantee shall have the responsibility to do the following:
  - (1) To show, to the City's satisfaction, whether the proposed purchaser, transferee, or assignee (the "proposed transferee"), which in the case of a corporation, shall include all directors and all persons having a legal or equitable interest fifty-one percent (51%) or more of the voting stock: (1) has ever been convicted of a felony or is presently under an indictment, investigation or complaint charging a felony; (2) has

ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him, or them by any court of competent jurisdiction; or (3) has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a cable system.

- (2) To establish, to the City's satisfaction, the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee which the Grantee was required to submit in its franchise application, and such other data as the City may request, where the same shall be audited, certified and qualified by a certified public accountant.
  - (3) To establish, to the City's satisfaction, that the legal, financial and technical capability of the proposed transferee is such as shall enable it to maintain and operate the cable system for the remaining term of the franchise under the existing franchise terms.
- (e) **Effect of City's Consent to Transfer.** The consent or approval of the City to any transfer by the Grantee shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall by its terms, be expressly subject to the terms and conditions of any franchise. The Grantee shall not be released from its obligations under this Chapter and the Franchise Agreement without the express written consent of the City.
- (f) **Transfer Document to be Filed with City.** A Grantee, upon transfer, shall within sixty (60) days thereafter file with the City a copy of the deed, agreement or other written instrument evidencing such sale, transfer of ownership or control or lease, certified and sworn to as correct by the Grantee.
- (g) **City's Right to Purchase System.** The City shall be entitled to a right of first refusal of any written offer to purchase the Grantee's system, which offer the Grantee has accepted subject to the City's rights under this Chapter. The price to be paid by the City shall be the price of such offer on the same terms and conditions as such offer. The City shall notify the Grantee of its decision to purchase within ninety (90) days of the City's receipt from the Grantee of a copy of the offer.

#### **SEC. 9-3-12 FRANCHISE AREA.**

A Grantee's franchise area shall be the territorial limits of the City of Cedarburg as they may exist now and in the future.

#### **SEC. 9-3-13 EXTENSION OF SERVICE.**

- (a) **Mandatory Extension of Service.** The Grantee shall, at its expense, extend its system to serve new customers within the franchise area pursuant to the following requirements:
- (1) The Grantee shall extend and make cable television service available to any households or areas existing or added to the franchise territory during the term of the franchise. This service shall be extended within one (1) year wherever density reaches twenty (20) dwelling units per strand mile.

- (2) Without regard to density of dwelling units, the Grantee shall extend and make cable television service available to any dwelling unit in all unserved, developing areas within three hundred (300) feet of existing cable plant.
- (b) **Non-Mandatory Extension of Service.** In areas not meeting the requirements for mandatory extension of service under Subsection (a), the Grantee shall provide to any potential subscriber desiring service an estimate of the cost to extend service to the potential subscriber. The Grantee shall extend service upon request of the potential subscriber. The Grantee shall cooperate with the potential subscriber in reaching a cost-sharing agreement, which shall provide that the Grantee will pay one hundred percent (100%) of the cost of the first three hundred (300) feet of the extension and that the Grantee will pay sixty percent (60%) and the potential subscriber forty percent (40%) of the cost of the next three hundred (300) feet of the extension, up to a maximum of six hundred (600) feet. For that part of an extension that is longer than six hundred (600) feet, the Grantee may charge the potential subscriber for the Grantee's actual cost of that portion of the extension. Within one (1) year, any amount paid by a subscriber for an extension under this subsection shall be refundable to that subscriber in the event the area subsequently meets the requirements for mandatory extension under Subsection (a). In no event, shall the amount of the refund exceed the amount paid by the subscriber for the extension.
- (c) **New Subdivisions.**
- (1) To expedite the process of extending the cable system into a new subdivision, the City will forward to the Grantee an approved engineering plan of each project. Subject to the density requirements set out above in Subsection (a)(i), the Grantee shall commence the design and construction process upon receipt of the plan.
- (2) In a new subdivision where utility and cable facilities are to be placed underground, the City shall give the Grantee at least thirty (30) days advance written notice of the date on which trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense. The Grantee shall provide specifications as needed for trenching and shall place its facilities in the trenches on the date specified in the notice. Costs of trenching and easements required to bring cable service to the new subdivision shall be non-discriminatory and shall be paid by the Grantee. As used herein, "trenching" shall include all means of installation of conduit, whether by excavation, plowing, trenching or directional boring.
- (d) **Special Agreements.** Nothing in this Chapter shall be construed to prevent the Grantee from serving areas not covered under this Section upon agreement with developers, property owners, or residents, provided that five (5) percent of the gross revenues derived from such service within the franchise area are returned to the City as required under Section 19 of this Chapter.

#### **SEC. 9-3-14 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.**

- (a) **Effective Date.** Any franchise awarded under this Chapter shall take effect thirty (30) days

after the effective date of the Franchise Agreement between the City and the Grantee provided that the Grantee has accepted the franchise pursuant to Subsection 14(b).

- (b) **Acceptance.** To accept a franchise granted under this Chapter, a Grantee must file any required bonds, funds and proof of insurance, as well as written notice of acceptance, with the City Administrator.
- (c) **Written Notice of Acceptance.** The Grantee's written notice of acceptance shall include a certification that the Grantee agrees to the following:
  - (1) **Grantee to Have No Recourse.** The Grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement of this Chapter or its regulation or from the City's exercise of its authority to grant additional franchises.
  - (2) **Acceptance of Power and Authority of City.** The Grantee expressly acknowledges that in accepting the franchise it has relied upon its own investigation and understanding of the power and authority of the City to grant this franchise.
  - (3) **Inducements Not Offered.** The Grantee acknowledges by acceptance of the franchise that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City concerning any term or condition of this franchise that is not included in this Chapter.
  - (4) **Grantee Accepts Terms of Franchise.** The Grantee acknowledges by the acceptance of the franchise that it has carefully read its terms and conditions and it is willing to and does accept all the obligations of such terms and conditions and further agrees that it will not set up as against the City the claim that any provision of this Chapter as adopted, is unreasonable, arbitrary, invalid or void, but shall be required to accept the validity of the terms and conditions of the franchise in their entirety.

#### **SEC. 9-3-15 RATE REGULATION.**

- (a) **City Reserves Right of Rate Regulation.** Except as otherwise provided in Subsection (b), below, the Grantee shall establish rates for its services which shall be applied on a nondiscriminatory basis in the franchise area. Pursuant to federal law, the City reserves the right to assume regulation of rates paid by cable subscribers; such rate regulation shall be performed by the City Council in accordance with FCC Rules and Regulations "Part 76, Subpart N." As specified by the FCC's Rules (Part 76, Subpart N), such rate regulation shall cover basic service rates and customer premises installations and equipment rates (including charges for, but not be limited to, converter boxes, remote control units, connections for additional television receivers and other cable home wiring). The City reserves the right to further regulate rates pursuant to any additional powers granted it by either the FCC or federal or state law.
- (b) **Service Disconnection.** A subscriber shall have the right to have its service disconnected without charge, except for actual costs incurred by the Grantee or other charges that are

allowable under FCC regulations, which shall include the removal of any equipment owned by the Grantee from the subscriber's residence. Such disconnection shall be made as soon as practicable and in no case later than thirty (30) days following written notice to the Grantee of same. No Grantee shall enter into any agreement with a subscriber which imposes any charge following disconnection of service, except for reconnection and subsequent monthly or periodic charges, and those charges shall be no greater than charges for new customers. This Section shall not prevent a Grantee from refusing service to any person because of the Grantee's prior accounts with that person which remain due and owing.

### **SEC. 9-3-16 RATE REGULATION PROCEDURES.**

- (a) **Notice of Certification.** In the event that the City assumes rate regulatory powers, the City shall notify the Grantee of the City's FCC Certification. Upon receipt of such notification by the Grantee, basic service rate regulation shall become effective.
- (b) **Initial Rate Filing.** Within thirty (30) days of the receipt of the City's notice of certification, the Grantee shall file for review by the City the Grantee's rates for basic service, installation and equipment and supporting documentation on the appropriate FCC forms.
- (c) **Subsequent Rate Filings.** Once the Grantee's initial rates for basic service, installation, and equipment have been established, based on the City's review of the Grantee's initial rate filing, the Grantee shall not file to change such rates more often than allowed under applicable federal law. The Grantee shall file all requests to change rates for basic service, installation, and equipment using the appropriate FCC forms and give written notice of such filing to all subscribers at least thirty (30) days before the Grantee desires the change to take effect. The notice shall state the precise amount of any rate change and briefly explain the reasons for the rate change. The Grantee shall not increase its rates for basic service, installation and equipment without the approval of the City Council.
- (d) **Review of Initial and Subsequent Rate Filings.**
  - (1) **Expedited Determination.** If the City Council is able to determine expeditiously that the rates proposed in an initial or subsequent rate filing are reasonable as determined under FCC regulations, the City Council shall: (1) afford interested persons an opportunity to express their views on the proposed rates; and (2) adopt a resolution approving the proposed rates within thirty (30) days from the date the Grantee submitted its rate filing to the City. If the City Council takes no action within thirty (30) days from the date the Grantee submitted its rate filing to the City, the proposed rates will go into effect.
  - (2) **Extended Review Period.** If the City Council is unable to determine within thirty (30) days from the date the Grantee submitted its rate filing to the City whether the proposed rates are reasonable, as determined under FCC regulations based on the material submitted by the Grantee, the City Council shall, by resolution, invoke the following additional periods of time, as applicable, to make a final determination: (1) ninety (90) days if the City Council needs more time to ensure that the proposed rates are reasonable; and (2) one hundred fifty (150) days if the Grantee has

- submitted a cost-of-service showing.
- (3) **Rate Increase Tolloed.** A proposed rate increase is tolled during the extended review period.
  - (4) **Delayed Determination.** If the City Council has not made a decision within the additional ninety- (90) or one hundred fifty- (150) day period, the City Council shall issue a brief written order at the end of the period requesting the Grantee to keep an accurate account of all amounts received by reason of any proposed rate increase and on whose behalf the amounts are paid. The Grantee may put the proposed rates into effect, subject to subsequent refund if the City Council later issues a written order disapproving any portion of the proposed rates.
  - (5) **Public Hearing.** During the extended review period, and before taking action on the proposed rates, the City Council shall hold at least one (1) public hearing at which interested persons may express their views and record objections. Said public hearing shall be announced by written notice published in a newspaper of general circulation at least ten (10) days before the date of hearing. An interested person who wishes to make an objection to the proposed rates may request the City to record the objection during the public hearing or may submit the objection in writing anytime before the rate order is issued. In order for an objection to be made part of the record, the objector must provide the City with the objector's name and address.
  - (6) **Notice and Opportunity to Comment.** The City Council shall not disapprove any portion of the proposed rates without giving the Grantee notice and an opportunity to comment.
  - (7) **Refunds.** As specified in the FCC regulations, the City Council may order the Grantee to refund to subscribers that portion of previously paid rates which have been found to be unreasonable. Before ordering the Grantee to refund previously paid rates to subscribers, the City Council shall give the Grantee notice and opportunity to comment. The method for paying any refund and the interest rate thereon shall be in accordance with FCC regulations.
  - (8) **Written Decision and Public Notice.** The City Council's decision concerning a requested rate increase shall be by written decision. If the rate increase proposed by the Grantee is disapproved in whole or in part, or if objections were made by other parties to the proposed rate increase, the written decision shall state the reasons for the decision and the City Council shall give public notice of its decision. Public notice will be given by advertisement once in the official newspaper of the City of Cedarburg.
- (e) **Proprietary Information.** To aid in the evaluation of the Grantee's proposed rates, the City Council may require the production of proprietary information, and in such cases will apply procedures for maintaining the confidentiality of such information which are consistent with applicable federal and state law.
  - (f) **Appeal.** The City Council's decision concerning rates for basic service, installation, and equipment, may be appealed to the FCC in accordance with applicable federal regulations.

**SEC. 9-3-17 PROTECTION OF INDIVIDUAL RIGHTS.**

- (a) **Discriminatory Practices Prohibited.**
- (1) A Grantee shall not refuse cable television service or otherwise discriminate against any person or organization who requests such service on the basis of race, color, religion, national origin, creed or sex. A Grantee shall not make or grant any unreasonable preference or advantage, nor subject any person to any prejudice or disadvantage, as to rates, charges, service facilities, rules, regulations or in any other respect. The Grantee shall comply at all times with the Cable Act and all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this Chapter by reference.
- (2) This Section shall not be deemed to prohibit promotional rates for service introductions or temporary promotional discounts. This Section does not preclude a Grantee from offering special services or rates to senior citizens, or services to commercial subscribers at rates different from those charged residential subscribers, which shall include, but not be limited to, charges for installation on a time and material basis. The Grantee may also enter into separate contracts with multiple dwelling unit buildings and may charge discounted rates for services based upon single point billing or other contractual considerations.
- (b) **Fairness and Equal Access.** A Grantee's system shall be operated in a manner consistent with the principles of fairness and equal access to its facilities, equipment, channels, studios and other services for all citizens, businesses, public agencies or other entities having a legitimate use for the system and no one shall be arbitrarily excluded from its use. Allocation of use of such facilities shall be made according to the rules or decisions of regulatory agencies affecting the same, and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution by the City.
- (c) **Equal Employment.** A Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state and local laws and regulations in effect on the date of the franchise grant, and as amended from time to time.
- (d) **Discontinuation of Service.** If a subscriber fails to pay any proper fee or charge for any service provided by the Grantee, the Grantee may discontinue said service, provided that the unpaid bill is at least forty-five (45) days past due and the subscriber has been given at least ten (10) business days prior notice of the intention to discontinue service. If the Grantee receives payment of all outstanding fees and charges, including any late charges, before any service has been discontinued, then the Grantee shall not discontinue said service. After any service has been discontinued, upon request of the subscriber accompanied by payment in full of all fees or charges due the Grantee and the payment of an appropriate reconnection charge, if any, the Grantee shall promptly reinstate said service. Subscribers shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the Grantee is notified to terminate service. The subscriber shall not be charged any fee for the

cancellation or downgrading of cable service, except in accordance with applicable FCC regulations.

(e) **Rights of Residents.**

- (1) An owner or operator of an apartment building, condominium, nursing home, mobile home park, or any other rental facility may not interfere with or charge a fee for the installation of cable system facilities for the use of a lessee of said property or premises, except that such owner or operator may require: (1) installation to conform to reasonable conditions necessary to protect the safety, appearance and functioning of the premises; (2) the Grantee, occupant, or tenant to pay for the installation, operation, or removal of such facilities; and (3) the Grantee, occupant, or tenant to agree to indemnify the owner or operator for any damages caused by the installation, operation or removal of such facilities.
- (2) It shall be unlawful for the Grantee to compensate or offer to compensate any person, or for any person to demand or receive compensation from the Grantee, for the placement upon the premises of such person of Grantee's facilities necessary to connect such person's premises to the distribution lines of Grantee to provide cable service to said premises.
- (3) Except where there is a bulk rate agreement between a landlord and the Grantee, a landlord may not discriminate in the amount of rent charged to tenants or occupants who receive cable service and those who do not.

**SEC. 9-3-18 ACCEPTANCE FEE.**

Upon the grant of a new franchise, the Grantee shall reimburse the City for all reasonable costs -- including but not limited to attorney and consultant fees -- incurred by the City relating to the grant of the new franchise.

**SEC. 9-3-19 FRANCHISE FEE.**

- (a) **Franchise Fee.** A Grantee shall pay to the City a franchise fee in the amount designated in the Franchise Agreement. Such franchise fee shall not be less than five percent (5%) of the Grantee's gross revenues, or such other maximum amount as allowed by law. In the event that a change in either state or federal law would allow the City to increase the franchise fee above five percent (5%) of the Grantee's gross revenues, the Grantee shall not be liable for such increase until the City shall give Grantee written notice of its desire to increase the franchise fee, provided that the Grantee shall have notified the City in writing of such change in the law before the change in the law took effect. The franchise fee payment shall be in addition to any other payment owed to the City by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes.
- (b) **Payment Schedule.** The franchise fee shall be paid quarterly, as follows: On May 15, August 15 and November 15 of each calendar year, Grantee shall pay to the City an amount equal to five percent (5%) of the annual gross revenues for the preceding calendar year, as

reflected in the certified audited statement provided pursuant to Subsection 19(c), below (or any independent audited statement obtained by the City pursuant to Subsection 19(c)). On February 15 of each year, Grantee shall pay to the City an amount calculated by subtracting: (1) the sum of the quarterly franchise fee payments made on the immediately preceding May 15, August 15 and November 15 from: (2) five percent (5%) of the annual gross revenues for the immediately preceding calendar year, as reflected in the certified audited statement provided with such payment, pursuant to Subsection 19(c), below.

- (c) **Financial Statement to be Provided by Grantee.** With each February 15 franchise fee payment, Grantee shall furnish to the City an audited statement certified by an independent Certified Public Accountant, reflecting the total amount of the gross revenues and all payments, deductions and computations for the preceding calendar year, including a statement identifying in detail the sources and actual amounts of gross revenues received by Grantee during such year. The City shall have the right to conduct an independent audit of the Grantee's records, and if such audit indicates a franchise fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable costs of such audit.
- (d) **Interest on Delinquent Payments.** If any payment is not made as required, interest on the amount due shall accrue from the date of the required submittal at an annual rate of twelve percent (12%). The Grantee shall pay an additional compensation to the City if the payment is late by forty-five (45) days or more. Such additional compensation shall be equal to an additional six percent (6%) per annum in order to defray those additional expenses and costs incurred by the City by reason of the delinquent payment.
- (e) **Acceptance by the City.** No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Chapter or for the performance of any other obligation of the Grantee.

- (f) **Alternative Fee Basis.** In the event the franchise fee payment established under this Chapter is ruled unconstitutional or unenforceable, the City may impose and collect an equivalent charge on any legally permissible basis, provided such charge does not exceed the previously allowed limit on franchise fee payments.

### **SEC. 9-3-20 CUSTOMER SERVICE STANDARDS**

- (a) **Communications to Subscribers.** Grantee shall provide at the time of installation, at least annually, when there is a change to information provided subscribers, and upon request by a subscriber, information concerning the following:
- (1) Products and services offered;
  - (2) Prices for programming services and conditions of subscription to programming and other services;
  - (3) Installation and service maintenance policies;
  - (4) Instructions on how to use the cable service;
  - (5) Channel positions of programming carried on the system;
  - (6) Billing and complaint procedures, including the address and telephone number of the City.
- (b) **Notification of Changes in Rates, Programming, or Channel Positions.** Grantee shall notify subscribers of any increase in rates, changes in programming services or channel positions as soon as possible. Notice must be given to the City at a minimum of forty-five days in advance and to subscribers at a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify the City and subscribers thirty (30) days in advance of any significant changes in the other information required in Section (a) above.
- (c) **Customer Service Facilities.**
- (1) The Grantee shall maintain a customer service facility within the boundaries of the City with the capacity to accept payments, adjust bills, respond to repair, installation, or other service calls, distribute or receive converter boxes, remote control units, or other related equipment, and receive complaints.
  - (2) Said customer service facility shall be open to the general public during normal business hours.
  - (3) Grantee may, at its option, provide subscribers with bill payment facilities through retail, financial, or other commercial institutions located within the boundaries of the City. Grantee may, at its option, provide secured collection boxes for receipt of bill payments.
- (d) **Fairness and Accessibility to Subscribers and the Public.** Grantee's customer services shall be operated in a manner consistent with the principles of fairness and equal accessibility of its facilities and other services to all citizens, businesses, public agencies, or other entities having a legitimate use for the Cable System and Grantee's facilities; and no one shall be arbitrarily excluded from their use; allocation of use of said facilities shall be made according to the rules or decisions of regulatory agencies affecting the same, and

where such rules are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution by the Regulatory Board.

(e) **Telephone Service.**

- (1) Grantee shall maintain a local or toll free, telephone access line which is available to subscribers twenty-four (24) hours per day, seven (7) days per week. Said telephone service shall be staffed by trained customer service representatives who shall be available to respond to customer telephone inquiries during Grantee's hours of business operation.
- (2) After the hours of Grantee's business operation, the telephone access line shall be answered either by, at Grantee's option, a service or automated response system. With the exception of requests for restoring cable service in the event of an outage, inquiries received after Grantee's hours of business operation shall be forwarded and responded to by a customer service representative on the next business day.
- (3) Grantee shall, under normal operating conditions, answer telephones staffed by customer service representatives, or through a service or automated response system, within thirty (30) seconds, including wait time, when the connection is made. If the call needs to be transferred, transfer time shall not exceed ninety (90) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a monthly basis. Grantee shall follow the definition for normal operating conditions as established by the FCC under Code of Federal Regulations Title 47, Section 76.309 (c)(4)(ii).
- (4) The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply, or except as required under Subsection 20(1)(ii), below.
- (5) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time as measured on a monthly basis.
- (6) Incoming telephone calls from subscribers to the Grantee shall not exceed an abandonment rate of five percent (5%) as measured on a quarterly basis.

(f) **Service and Repair Calls.**

- (1) Grantee shall establish a maintenance service capable of identifying, locating, and correcting service malfunctions in an expeditious manner. Said service shall be available on a twenty-four (24) hour basis, seven (7) days per week to restore service of the Cable System to subscribers in the event of significant deficiencies or failure of the Cable System.
- (2) Grantee shall provide to subscribers a listed local or toll-free telephone number for service and repair calls.
- (3) Excluding conditions beyond the control of the Grantee (as defined in Section 44(f)), Grantee shall begin working on complaints, requests, and interruptions to cable service promptly, and in no event shall the response time for calls received subsequent to 12:00 p.m. exceed twenty-four (24) hours. The Grantee shall begin action to correct other service problems within four (4) hours if received by 12:00

p.m. or not later than the next business day after notification of service problems if the call is received after 12:00 p.m.

- (4) The Grantee shall immediately initiate corrective action for any outage affecting three (3) or more subscribers who receive services from the same trunk or feeder line. Restoration of the Cable System for a condition of outage shall be completed as promptly as is feasibly possible, but in no situation longer than twenty-four (24) hours after notice without the express authorization of the City.
- (5) An outage affecting three (3) or more subscribers in a multi-family dwelling served from the same Cable System tap shall be corrected in the same manner as stated above.
- (6) For each repair, service, installation and installation-related activity call, the Grantee shall establish either a specific time for an appointment with the customer, or specify at maximum, the following time blocks for appointments as follows:
  - a. a four (4) hour time block within one (1) year from the effective date of the Franchise Agreement;
  - b. a three (3) hour time block within two (2) years from the effective date of the Franchise Agreement; and
  - c. a two (2) hour time block within three (3) years from the effective date of the Franchise Agreement and thereafter for the duration of the Franchise Agreement.

The Grantee may, at its discretion, schedule service calls and other installation, or installation-related activities outside of its usual hours of operations for the express convenience of the customer.

- (7) Grantee, or its agents or designees, shall not cancel an appointment with a customer after the close of business on the business day prior to the appointment.
  - (8) Upon completion of the service call, installation or installation-related activity, the customer shall receive a report of the service call. Grantee may send this report by United States mail within fourteen (14) days of the service date if the customer is not present at the time of the service call.
  - (9) A representative of the Grantee shall contact a customer in the event that a service repair technician or other representative of the Grantee is running late for an appointment and will be unable to keep the scheduled appointment time. Grantee or his representative shall reschedule the appointment, as necessary, at a time which is convenient for the customer.
  - (10) The standards promulgated in (i)-(ix) shall be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.
- (g) **Credits for Missed Appointments.** The Grantee shall issue a credit equal to one day of service if the Grantee's technician is unable to make a scheduled appointment or is unable to complete a scheduled service call due to a late arrival. This Section shall not limit or prohibit Grantee from providing other credits or refunds for missed service appointments in excess of those described above as a part of its corporate policy or participation in a promotional activity which pertains to the provision of on-time service appointments.

(h) **Identification of Customer Service Representatives and Technicians.**

- (1) Upon telephone contact by a customer, customer service representatives of the Grantee shall identify themselves by name. Technicians representing the Grantee or his subcontractors shall wear a company identification badge prominently displayed on the outermost clothing of the technician or subcontractor.
- (2) Technicians of the Grantee and his subcontractors shall identify vehicles used for technical service with the name of the Grantee or subcontractor of the Grantee. Vehicles belonging to the subcontractor shall also be identified with the Grantee's name. The type of identification need not be of a permanent nature.

(i) **Billing Practices.**

- (1) The Grantee shall send subscribers a monthly statement indicating a date for payment due.
- (2) The Grantee shall send bills that are clear, concise, and understandable. Such bills must be fully itemized, with itemization including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
- (3) All statements shall clearly indicate a date showing when the bill was sent and shall clearly indicate a telephone number for billing inquiries and adjustments.
- (4) All statements shall clearly denote the dates of services for which the subscriber is being billed.
- (5) The Grantee shall issue the subscriber a credit for the loss of four (4) continuous hours of service. Credits shall be applied to the subscriber's monthly bill. Loss of service shall include, but not be limited to, loss of cable audio or video service from the cable to the subscriber's television set, converter box failure or failure of similar devices which provide cable service to the subscriber's television set. Credit adjustments shall be made no later than one (1) billing cycle following the determination that a credit is warranted.
- (6) The Grantee shall issue the subscriber a refund, if any is due, upon termination of cable service and return of rental equipment for the reception of cable signals. The Grantee shall refund the subscriber in the form of a refund check. Refund checks shall be issued promptly but no later than either the customer's next billing cycle following resolution of the request, or thirty (30) days, whichever is earlier, or the return of the equipment supplied by the Grantee if service is terminated.
- (7) Past due billing statements or past due notices shall be delivered in the same manner and method as the subscriber billing statement. The Grantee may, at its discretion, send past due notices more frequently to the subscriber than the regular subscriber statement.
- (8) The Grantee shall be prohibited from engaging in negative option billing as so defined in Section 623 (f) of the Cable Consumer Protection and Competition Act of 1992 (47 CFR 543).

(j) **Equipment and Service Deposits.**

- (1) The Grantee may assess a reasonable deposit for the acquisition of cable service by a

subscriber, and for the rental of converter box, remote control, and related equipment necessary for the reception or interdiction of cable service to the subscriber's television set. Grantee shall receive no deposit, advance payment, or penalty from any subscriber or potential subscriber for services other than those which are specified herein.

- (2) Upon the termination of cable service by the subscriber and return of converter boxes, remote control units, and related equipment in reasonable condition, deposits for said service and equipment shall be returned to the subscriber at the time when the equipment supplied by the Grantee is returned.
- (3) If the subscriber has placed a deposit for cable services and related equipment in an amount exceeding one hundred dollars (\$100), the Grantee shall place the deposit in an interest-bearing account and refund the deposit and interest upon termination of cable service and return of the equipment in reasonable operating condition.
- (4) Deposits for installation of service shall be returned to the subscriber within thirty (30) days, or cancellation of service.
- (5) Grantee shall refund to any subscriber of less than thirty (30) days an amount equal to the installation and connection charge paid by such subscriber in accordance with the then existing schedule of charges due to:
  - a. Grantee's failure to render service to such subscriber of a type and quality provided for herein;
  - b. If service to a subscriber is terminated by the Grantee without good cause; or
  - c. If the Grantee ceases to operate the Cable System authorized herein for any reason except for termination or expiration of the Franchise.

Under the terms of this Section, the Grantee shall be required to refund the monthly charge on a prorated basis for interruption of service.

(k) **Subscriber Complaint Procedure.**

- (1) Upon receipt by the Grantee of a complaint by phone or in writing, the Grantee shall document said complaint and, where necessary, investigate or reply to the subscriber's complaint within twenty-four (24) hours of receipt of said complaint.
- (2) If the Grantee's response to the complaint is not satisfactory to the complainant, the complainant shall be referred to the Grantee's appropriate Cable System management personnel for further assistance. Grantee's management shall make a good faith effort to reach resolution of the complaint in a manner satisfactory to the complainant within forty-eight (48) hours of referral of said complaint. If Grantee's Cable System management personnel cannot resolve the complaint to the satisfaction of the complainant, Grantee shall provide the name address and telephone number of appropriate management staff at the next level of operations, to include area, regional, or national offices.
- (3) Grantee shall respond in writing to written subscriber complaints within fourteen (14) calendar days of receipt of said complaint. The Grantee shall make a good faith effort to resolve such complaints within a reasonable period of time, such period of time not to exceed forty-five (45) calendar days after receipt of such

correspondence. Complaints which have not been satisfactorily resolved may be brought to the attention of the City by a citizen, subscriber, or by the Grantee upon expiration of the forty-five (45) day period.

(l) **Installation of Service.**

- (1) Standard installations will be performed within five (5) business days after an order has been placed. Standard installations shall be those that are located up to one hundred twenty-five (125) feet from the existing Cable System.
- (2) Where the Grantee has received a request for a non-standard installation, which shall include but not be limited to, those installations which are located more than one hundred twenty-five (125) feet from the existing distribution system, or an installation that does not meet general specifications of a standard installation as a result of the requirements of the subscriber, the Grantee shall provide said non-standard installation within seventy-five (75) calendar days of the receipt of the request provided that the Grantee has applied for and received all necessary permits, approvals, and/or licenses prior to the scheduled date of installation.
- (3) Where installation is to take place in a single-family or multi-family housing unit subdivision, commercial building, or condominium association building or common area, the Grantee shall be required to receive approval of construction plans for wiring of subscriber drop cable and rights of entry onto the premises prior to the start of installation work. In the event that the Grantee must use an easement for transmission of cable service to a subscriber on property owned by a condominium association, Grantee shall secure said easement in accordance with all applicable local and state laws and regulations.
- (4) Temporary subscriber drops shall be buried within ninety (90) days of the date of installation unless the Grantee receives permission from the City to postpone burial.

(m) **Service Disconnection.**

- (1) A subscriber shall have the ability to disconnect his service at any time at no charge. The Grantee shall disconnect the subscriber's service within forty-eight (48) hours of notification to the Grantee of the request for disconnection.
- (2) A subscriber shall not be disconnected if the status of his account is in dispute, and notice is given by the subscriber to the Grantee in writing that the status of the account is in dispute, and the Grantee and the subscriber are working to resolve the amount in dispute. If no resolution is reached within sixty (60) days, Grantee may disconnect the subscriber.

(n) **Authority to Investigate Subscriber Complaints.**

- (1) The City shall have the authority to investigate complaints tendered by subscribers upon notification to the City either by telephone or in writing. The City shall keep a documented record of all complaints. Complaints received by the City shall be forwarded to the Grantee. Upon completion of investigation of a subscriber complaint, the City shall have the authority to order the Grantee to correct any error, deficiency, or violation of the Franchise Agreement or this Ordinance found in the course of such investigation. The City shall have the authority to require the Grantee

to develop procedures for resolution of complaints as a condition of the Franchise Agreement, and to require the Grantee to review and amend such procedures from time to time as necessary.

- (2) When there have been similar complaints made or where there exists other evidence which, in the judgment of the City which casts doubt on the reliability or quality of the service, the City shall have the right and authority to compel the Grantee to test, analyze and report on the performance of the system. Such test or tests shall be made at the expense of the Grantee, and the reports of such test or test shall be delivered to the City no later than thirty (30) days after the City formally notifies the Grantee. Such reports shall include the following information: The system component tested, the equipment used and procedures employed in said testing; the results of such tests; and the method in which such complaints were resolved. Any other information pertinent to the specialist shall be recorded and provided to the City upon request. Said tests and analyses shall be supervised by a registered, professional engineer, not on the permanent staff of the Grantee, and selected jointly by the City and the Grantee. The engineer shall sign all records on special test and forward to the City such records with a report interpreting the result of the tests and recommending actions to be taken by the City. The City's right under this provision shall be limited to the requiring of tests, analyses and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the City has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard service.
- (o) **Promotional Materials.** Grantee shall file with the City a copy of all local, regional, statewide, or national promotions which it offers to subscribers not later than the date of mailing to subscribers.

#### **SEC. 9-3-21 TECHNICAL STANDARDS.**

- (a) **Standards.** The Grantee's system shall be constructed and operated so as to meet those technical and performance standards set out in the Franchise Agreement and as required by the FCC's rules and regulations relating to cable television systems and found in 47 C.F.R. § 76.601 to 76.618, as amended, from time to time.
- (b) **Tests and Compliance Procedures.** Within sixty (60) days after the effective date of the Franchise Agreement, the Grantee shall, upon the City's request, submit a detailed test plan describing the methods and schedules for testing its system on an ongoing basis to determine compliance with this Chapter and the Franchise Agreement. The test plan shall be subject to the approval of the City, which approval shall not be unreasonably withheld. The tests for basic cable service shall be performed at intervals of no greater than twelve (12) months. The tests may be witnessed by representatives of the City, and the Grantee shall submit written test reports to the City. If more than ten percent (10%) of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective

measures have been taken, and the entire test shall be repeated. Grantee's failure to take corrective measures within thirty (30) days after the initial tests are performed may be considered a breach of the franchise.

- (c) **Additional Testing.** At any time after commencement of service to subscribers, the City may require the Grantee to perform additional tests, full or partial repeat tests, or tests involving service to a specific subscriber. Such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance with the technical standards established in this Chapter or the Franchise Agreement.
- (d) **Costs of Tests.** The costs of all tests required in Subsections (b) and (c) above, and retesting as necessary, shall be paid by the Grantee and may be passed through to subscribers.

#### **SEC. 9-3-22 CONSTRUCTION STANDARDS.**

- (a) **Compliance with Safety Codes.** All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all state and local codes where applicable.
- (b) **Compliance with Electrical Codes.** All installation of electronic equipment shall be of a permanent nature, durable, installed and maintained in accordance with the applicable sections of the then-current edition of the National Electric Safety Code and all state and local codes where applicable.
- (c) **Compliance with Aviation Requirements.** Antennas and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aeronautical Administration and all other applicable federal, state, or local laws, codes and regulations governing the erection and operation of supporting structures or television towers.

#### **SEC. 9-3-23 CONSTRUCTION AND INSTALLATION.**

- (a) **Approval of Proposed Construction.**
  - (1) The Grantee shall first obtain the City's approval prior to commencing construction on the streets, alleys, public grounds or places of the City. Applications for approval of construction shall be in a form provided by the City.
  - (2) The right of construction, including easements, is not implied except on locations where the City has the authority to grant such rights and easements and then only in conformity with the provisions of this Chapter. All other rights of construction, including easements, shall be the responsibility of the Grantee.
- (b) **Excavation Permits.** The Grantee shall not open or disturb the surface of any street, sidewalk, driveway, or public place for any purpose without first having obtained all necessary permits.
- (c) **Use of Existing Poles or Conduits.** Nothing in this Chapter shall authorize the Grantee to erect and maintain in the City, new poles where existing poles are servicing the area. The

Grantee shall seek and obtain permission from the City before erecting any new poles, underground conduit or appurtenances where none exist at the time the Grantee seeks to install or expand its system.

(d) **Method of Installation.**

- (1) All wires, cables, amplifiers and other property of the Grantee shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety considerations.
- (2) All installations shall be underground in those areas of the City where public utilities providing telephone and electric service are underground at the time of installation.
- (3) In areas where telephone or electric utility facilities are aboveground, the Grantee shall place its facilities underground without additional cost to the City or to the residents of the City (other than as may be reflected in rates charged to subscribers) at such time as such telephone and electric facilities are required to be placed underground by the City or are placed underground. The City shall give Grantee at least six (6) months prior notice of any construction to place telephone or electric facilities underground.

**SEC. 9-3-24 PROOF OF COMPLIANCE.**

Upon reasonable notice by the City, the Grantee shall demonstrate compliance with any or all of the standards and requirements imposed by this Chapter. The Grantee shall provide sufficiently detailed information to permit the City to readily verify the extent of compliance.

**SEC. 9-3-25 COMPLAINT PROCEDURES.**

- (a) **Complaints to Grantee.** A Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the City. The procedures shall prescribe the manner in which a subscriber may submit a complaint, either orally or in writing, to the Grantee. At the conclusion of the Grantee's investigation of a subscriber complaint, but in no event more than ten (10) days after receiving the complaint, Grantee shall notify the subscriber of the results of the investigation and its proposed action or resolution, if any. The Grantee shall also notify the subscriber of the subscriber's right to file a complaint with the City in the event the subscriber is dissatisfied with the Grantee's decision. The City appoints the City Administrator as its agent to receive inquiries or complaints about the Grantee's operations.
- (b) **Complaints to the City.** A subscriber who is dissatisfied with the Grantee's proposed decision shall be entitled to have the complaint reviewed by the City. The subscriber shall initiate the review by filing a complaint, together with the Grantee's decision, if any, with the City, and by the City notifying the Grantee of the filing. The subscriber shall make such filing and notification within twenty (20) days of receipt of the Grantee's decision or, if no

Grantee decision has been provided, within thirty (30) days after filing the original complaint with Grantee. The City may extend these time limits for reasonable cause.

- (c) **Review by the City.** The City shall determine, upon a review of a subscriber's complaint and the Grantee's decision, if any, whether further action is warranted. In the event the City does not initiate further proceedings within fifteen (15) days of the filing of the complaint, the Grantee's proposed action or resolution shall be final. If the City decides to initiate further investigation, the City shall require the Grantee and the subscriber to submit, within ten (10) days of notice thereof, a statement of the facts and arguments in support of their respective positions. The City shall issue a written decision within fifteen (15) days of receipt of the statements or, if a hearing is requested, within fifteen (15) days of the conclusion of the hearing, setting forth the basis of the decision.
- (d) **Remedies for Violations.** The City may, as a part of a subscriber complaint decision issued by the City under the provisions of this Chapter, impose monetary damages on the Grantee. Damages may be imposed only if the City finds that the Grantee has arbitrarily refused or failed without reasonable justification to comply with the provisions of this Section.

#### **SEC. 9-3-26 COMPLAINT FILE, SERVICE REQUEST LOG, AND OUTAGE LOG.**

- (a) **Complaint File.** A Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the cable system, including a subscriber complaint report log. A Grantee shall establish a procedure to remedy complaints quickly and reasonably to the satisfaction of the City. A Grantee shall keep the subscriber complaint report log and complete records of its actions in response to all complaints for a period of three (3) years. The Grantee shall send a copy of its subscriber complaint report log to the City monthly upon request. Other related records shall be made available to the City upon request during regular business hours with reasonable notice.
- (b) **Service Request Log and Summary.** The Grantee shall maintain a log and summary of all subscriber service requests, identifying the number and nature of the requests and their disposition for a period of three (3) years. A copy of such log and summaries shall be made available to the City upon request.
- (c) **Outage Log and Summary.** A Grantee shall maintain a log and summary of all major service outages for a period of three (3) years. For the purposes of this Subsection, a "major service outage" shall mean any interruption of sound or picture on one (1) or more channels of a duration of at least twenty-four (24) hours to at least two (2) subscribers. A copy of such log and summaries shall be made available to the City upon request.

#### **SEC. 9-3-27 AUTHORITY FOR USE OF STREETS.**

- (a) **Use of Streets.** For the purpose of constructing, operating and maintaining a cable system in the City, a Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals,

attachments and other property and equipment as are necessary and appurtenant to the operation of the Grantee's system, provided that the Grantee applies for and obtains all applicable permits and otherwise complies with this Chapter and all other City codes and ordinances.

- (b) **Filing of Plans with the City.** Prior to construction, reconstruction, upgrade, rebuild or any other major modification or change of the Grantee's system, other than routine repairs, the Grantee shall, in each case, file its plans for such work with the City and shall not commence any such work until it receives written approval of its plans from the City. The City shall not unreasonably withhold its approval. Upon the City's request, the Grantee shall provide written progress reports to the City until the work is completed.
- (c) **Non-Interference/Notice.** The Grantee shall construct, maintain, and operate its system so as not to interfere with other uses of the streets. The Grantee shall individually notify all residents directly affected by the proposed work at least five (5) business days prior to the commencement of such work.

#### **SEC. 9-3-28 CONDITIONS ON USE OF STREETS.**

- (a) **Facilities Not to be Hazardous or Interfere.**
  - (1) All wires, conduits, cables and other property and facilities of the Grantee shall be so located, constructed, installed and maintained as not to endanger any person or unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the City.
  - (2) The Grantee shall keep and maintain all its property in good condition, order and repair. The City reserves the right to inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in part or in whole, by the Grantee.
  - (3) The Grantee shall keep accurate maps and records of all its facilities and furnish copies of such maps and records when requested by the City.
  - (4) The Grantee shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric or telephone fixtures or with any water hydrants or mains. All poles or other fixtures placed in a street shall be placed in the right-of-way between the roadway and the property, as specified by the City.
- (b) **Restoration and Reimbursement.**
  - (1) In the event of disturbance of any street or private property by the Grantee, it shall, at its own expense and in a manner approved by the City and the owner, replace and restore such street or private property in as good a condition as before the work causing such disturbance was done.
  - (2) If the Grantee fails to perform such replacement or restoration, the City or the owner shall have the right to do so at the sole expense of the Grantee. The Grantee shall make payment to the City or owner for such replacement or restoration immediately upon demand. All requests for replacement or restoring of such streets or private

property as may have been disturbed must be in writing to the Grantee.

- (c) **Emergency Removal of Facilities.** If, at any time, in case of fire or disaster in the City, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cables, amplifiers, appliances or appurtenances thereto of the Grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by the Grantee, at its sole expense.
- (d) **Changes Required by Public Improvements.** The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Grantee when required by the City by reason of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, City-owned power or signal lines, and tracts or any other type of structure or improvement by public agencies.
- (e) **Requests for Removal or Change.** The Grantee shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal, raising or lowering the wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given notice not less than nine (9) business days prior to any move contemplated to arrange for temporary wire changes.
- (f) **Authority to Trim Trees.** The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. All trimming is to be done under the supervision and direction of the City after the explicit, prior written notification and approval of the City and at the expense of the Grantee.

#### **SEC. 9-3-29 SERVICES.**

- (a) **Services Provided.** The Grantee shall provide, as a minimum, the initial services listed in the Franchise Agreement. The Grantee shall not reduce such services without prior notification to and approval by the City.
- (b) **Basic Cable Service.** Basic cable service, which shall include any service tier which includes the retransmission of local television signals, shall be provided to all subscribers at the established monthly subscription rates.
- (c) **Public Educational and Government (PEG) Access Channel.** Upon request by the City, the Grantee shall provide at least four (4) channels for use by the City for PEG purposes.
- (d) **Cable Channel for Commercial Use.** The Grantee shall designate channel capacity for commercial use as required by the Cable Act and applicable law.

#### **SEC. 9-3-30 SUBSCRIBER PRIVACY.**

- (a) **Use of Data From Subscribers.** A Grantee, the City or any other person shall not initiate or use any form, procedure or device for procuring information or data from cable subscribers' terminals by use of the cable system, without prior written authorization from each

- subscriber so affected.
- (b) **Subscriber Data.** The City, the Grantee or any person shall not, without prior written valid authorization from each subscriber so affected, provide any data identifying or designating subscribers. Any data so authorized will be made available to the authorizing subscriber in understandable fashion.
  - (c) **Subscriber Agreements.** Any agreement or contract such as is necessary for (a) and (b) above shall not be part of any other contract or agreement and shall not be a condition of subscribing to the system.
  - (d) The provisions of this Section shall not apply to any monitoring for cable system integrity or to verify billing accuracy.

### SEC. 9-3-31 NOTICES AND BILLING.

- (a) **Operating Policies.** The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request: (i) products and services offered; (ii) prices and options for programming services and conditions of subscription to programming and other services; (iii) installation and service maintenance policies; (iv) instructions on how to use the cable services; (v) channel positions of programming carried on the cable system; (vi) the procedures for billing and making inquiries or complaints (including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed) and also furnish information concerning the City office responsible for administration of the franchise including the name and telephone number of the office; (vii) if applicable, and permitted, the rules and regulations for using any facilities, including a studio or mobile van of the Grantee; (viii) the method of securing a voluntary disconnection in a manner consistent with the specific policy set forth in this ordinance; and (ix) the extent of the credit/refund policy in a manner consistent with the specific policy set forth in this ordinance. The written information shall also include a description of the Grantee's business hours, legal holidays and procedures for responding to inquiries after normal business hours. The written information shall contain no print smaller than eight (8) point type, and any exclusions, limitations, or caveats shall be clearly indicated as such in the notice. The Grantee shall provide all subscribers and the City with written notice no less than thirty (30) days prior to any proposed change in any of the areas listed in this Subsection.
- (b) **Rates, Programming Service, and Channel Position.** The Grantee shall provide subscribers with written notice of any changes in rates, programming services, or channel position at least thirty (30) days prior to implementing such change(s) and shall provide the City with written notice of any such changes at least forty-five (45) days prior to implementing such change(s). Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Notices to subscribers shall inform them of their right to file

complaints about changes in cable programming service tier rates and services, shall state that the subscriber may file the complaint within ninety (90) days of the effective date of the rate change, and shall provide the address and telephone number of the City Administrator. Notwithstanding any other provision of this Chapter, the Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment or charge of any kind imposed by the City or any Federal or State agency on the transaction between the Grantee and the subscriber.

- (c) **Billing.** Bills shall be clear, concise, understandable and shall include the Grantee's toll free or collect telephone number for subscriber use. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the Grantee shall respond to a written complaint from a subscriber within thirty (30) days. Refund checks will be issued promptly, and no later than either (i) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (ii) the return of the equipment supplied by the Grantee if service is terminated. Credits for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
- (d) **Copies to the City.** Copies of all notices provided to subscribers shall be filed concurrently with the City.

### **SEC. 9-3-32 QUALITY OF SERVICE.**

The overall quality of service provided by a Grantee to subscribers may be subject to evaluation by the City, at least annually. In addition, the City may evaluate the quality of service at any time, based on subscriber complaints received by the Grantee, and the City, and the Grantee's response to those complaints. Upon determining that service quality is inadequate, the City may order the Grantee to cure the inadequacies. The Grantee shall commence corrective action within thirty (30) days after receipt of written notice such order. Failure to do so shall be deemed to be a material breach of the franchise and subject to the remedies prescribed in this Chapter. The City may use the performance bond and/or security fund provided for in this Chapter to remedy any such franchise breach.

### **SEC. 9-3-33 OPEN BOOKS AND RECORDS.**

The City shall have the right to inspect, upon twenty-four (24) hours written notice, at any time during normal business hours at the Grantee's regional office all books, records, maps, plans, financial statements, all logs required under this Chapter, performance test results, record of requests for service and other like materials of the Grantee relating to the operation of the franchise. If any such books or records are not kept in the regional office, and if the City shall determine that an examination of such records is necessary or appropriate to the performance of any of City's duties, then the Grantee shall make such records available locally on ten (10) business days notice. When

requested by the Grantee and to the extent allowed by law, the City shall treat as confidential proprietary information or trade secrets obtained by the City during such inspection; the City shall make such information available only to those persons who must have access to the information to perform their duties on behalf of the City.

#### **SEC. 9-3-34 REPORTS AND RECORDS.**

- (a) **Annual Submissions to the City.** The Grantee shall submit to the City with each February 15 franchise fee payment a written annual report which shall include the following information:
  - (1) A summary of the previous year's activities in development of the cable system, including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for each class of service;
  - (2) A gross revenues statement by revenue category.
- (b) **Submissions to the City on Request.** Upon the City's request, the Grantee shall submit to the City a written report which shall include the following information:
  - (1) A list of Grantee's officers, members of its board of directors, and other principals of Grantee;
  - (2) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the Grantee and its parent, subsidiary and affiliated corporations and other entities, if any, unless the parent is a public corporation whose annual reports are publicly available;
  - (3) A statement of projected construction, if any, for the next two (2) years; and
  - (4) Accurate copies of maps and/or plats of the location and character of all existing and proposed installations of the Grantee over, upon or under the streets of the City.
- (c) **Other Submissions.** Copies of all petitions, applications and communications submitted by the Grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting cable operation within the franchise area shall also be submitted simultaneously to the City.
- (d) **Records to be Kept on File.** All records required by this Section shall be kept on file by the Grantee for the applicable periods under federal and state law.

#### **SEC. 9-3-35 PERFORMANCE AND CONSTRUCTION BONDS.**

- (a) **Performance Bond.** At the time a new franchise is granted, the Grantee shall furnish and file with the City a performance and payment bond, or a performance and payment bond together with such other security as is approved by the City. The bond shall be in the amount of \$10,000 and shall run to the City, who may be entitled to damages as a result of any occurrence in the operation of or termination of the cable system operated under this Chapter and the Franchise Agreement. The bond shall be conditioned upon the faithful performance of the Grantee of all terms and conditions of the franchise granted under this Chapter. The rights reserved to the City with respect to the bond or other security are in

addition to all other rights the City may have under this Chapter or any other law.

- (b) **Construction Bond.** Prior to undertaking any construction work costing \$50,000 or more relating to the franchise granted under this Chapter, the Grantee shall file with the City a construction bond in the amount specified in the Franchise Agreement in favor of the City and any other person who may claim damages as a result of the breach of any duty by the Grantee assured by said bond. Such construction bond shall be in the form approved by the City and issued by a company approved by the City. In no event shall the amount of such construction bond be construed to limit the liability of the Grantee for damages. The City may waive this requirement or permit consolidation of the construction bond with the performance bond specified above in Subsection (a).

### **SEC. 9-3-36 SECURITY FUND.**

Within thirty (30) days after the effective date of the franchise, the Grantee may be required to deposit to the City and maintain on deposit through the term of this franchise, the sum specified in the Franchise Agreement, as security for the Grantee's faithful performance of all of its obligations under this Chapter and the Franchise Agreement and for the payment by the Grantee of any claims, liens, taxes and fees due to the City which arise by reason of the construction, operation, or maintenance of the Grantee's system. Any interest earned on this deposit shall be calculated annually based upon the interest rate available to the City from the Wisconsin Local Government Investment Pool and shall be paid to the Grantee. Any amount drawn from this account to satisfy penalties under Section 9 shall be replenished within thirty (30) days.

### **SEC. 9-3-37 WORK PERFORMED BY OTHERS.**

The Grantee shall give prior notice to the City specifying the names and addresses of any entity, other than the Grantee, that, within one (1) calendar year, will perform services valued at \$10,000 or more relating to the franchise, provided, however, that all provisions of the franchise remain the responsibility of the Grantee. All provisions of any franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of the franchise. Nothing in this Section shall be construed as allowing the transfer of any rights or responsibilities of the Grantee without written approval of the City.

### **SEC. 9-3-38 INDEMNITY.**

- (a) **Extent of Indemnity.** The Grantee shall, by acceptance of any franchise granted, indemnify, defend and hold harmless the City, its officers, boards, commissions, agents, and employees from any and all claims, suits, judgments, for damages or other relief, costs and attorneys fees in any way existing out of or through or alleged to arise out of or through: (1) the act of the City in granting the franchise; (2) the acts or omissions of Grantee, its servants, employees, or agents including, but not limited to, any failure or refusal by Grantee, its servants, employees or agents to comply with any obligation or duty imposed on Grantee by

this Chapter or the Franchise Agreement; or (3) the exercise of any right or privilege granted or permitted by this Chapter or the Franchise Agreement. Such indemnification shall include, but not be limited to, all claims arising in tort, contract, infringements of copyright, violations of statutes, ordinances or regulations or otherwise.

- (b) **Notification of Claims.** The City shall notify the Grantee within ten (10) business days after the presentation of any claim or demand, either by suit or otherwise, made against the City.
- (c) **Defense of Claims.** In the event any claims shall arise, the City or any other indemnified party shall tender the defense thereof to the Grantee. Defense of any such claim shall be by counsel reasonably acceptable to the City or other indemnified party. Provided, however, that the City or other indemnified party in its sole discretion may participate in the defense of such claims at Grantee's sole expense, and in such event, such participation shall not relieve the Grantee from its duty to defend against liability or to pay any judgment entered against such party. Grantee shall not agree to any settlement of claims without the City's approval.
- (d) **City's Negligence.** The Grantee shall not be required to indemnify the City for negligence or willful misconduct on the part of the City's officials, boards, commissions, agents or employees.

#### **SEC. 9-3-39 INSURANCE.**

- (a) **Liability Insurance.** The Grantee shall maintain throughout the term of the franchise, and any extensions thereto, the insurance policies described below, which shall be written on an occurrence basis. Such policies shall name as an additional insured the City, its officers, boards, commissions, agents and employees, shall be primary to any insurance carried by the City, and shall be obtained from a company or companies approved by the City and in a form satisfactory to the City. Such policies shall be as follows:
  - (1) Comprehensive General Liability Insurance. General Comprehensive Liability Insurance containing the following coverages: Premises/Operations; Products/Completed Operations; Broad Form Property Damage; Contractual Liability; Coverage for Explosion, Collapse and Underground Hazards; and Pollution Control Liability. The policy shall include limits of not less than \$1,000,000 for bodily injury (including death) and property damage for each occurrence of not less than \$2,000,000 in the aggregate.
  - (2) Worker's Compensation. Worker's Compensation Insurance in compliance with Section 102.31 of the Wisconsin Statutes and in compliance with the laws of each state having jurisdiction over each employee.
  - (3) Comprehensive Automobile Liability. Comprehensive Automobile Liability including owned, non-owned, and hired vehicles with limits of not less than \$1,000,000 for bodily injury (including death) and \$1,000,000 for property damage for each occurrence.
  - (4) Umbrella Liability. Umbrella Liability with limits of not less than \$8,000,000, which shall carry the following endorsement:

It is hereby understood and agreed that despite anything to the contrary where underlying insurance, as described herein, provides greater protection or indemnity to the insured than the terms and conditions of this policy, this insurance shall pay on behalf of the insured the same terms, conditions and coverages which apply to the basic underlying insurance. Where no such broader underlying insurance exists, this policy shall pay on behalf of the insured upon terms and conditions and limitations of the carrier's umbrella excess policy.

- (b) **Notice of Cancellation or Reduction of Coverage.** The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this Chapter and the Franchise Agreement and shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the City Administrator by registered mail of two (2) copies of a written notice of such intent to cancel or reduce the coverage.

- (c) **Evidence of Insurance Filed with City Administrator.** All policies of insurance or certified copies thereof (together with all required endorsements) and written evidence of payment of required premiums, shall be filed and maintained with the City Administrator during the term of the franchise or any renewal thereof.
- (d) **City's Right to Revise Insurance Requirements.** The City reserves the right to revise the insurance requirements stated in this Chapter at any time during the term of any franchise granted under this Chapter.
- (e) **No Waiver of Performance Bond.** Neither the provisions of this Chapter nor any insurance accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under this franchise or for damages, either to the full amount of the bond or otherwise.

#### **SEC. 9-3-40 WAIVER OF CHARGES.**

During the term of a franchise and upon request by the City, the Grantee shall provide free basic and extended basic service to any and all City buildings used for municipal purposes and to all public and parochial schools within the franchise area and within three hundred (300) feet of existing cable plant. The Grantee may charge for usual installation costs. The City may extend service within each building so served as long as such extensions are in compliance with applicable FCC rules and

regulations or may request that the Grantee provide such extensions at the Grantee's cost for labor and materials. Premium channels shall be available to the City at their retail cost.

**SEC. 9-3-41 PROTECTION OF NON-SUBSCRIBERS.**

A Grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with signals received by radios or televisions not connected to the Grantee's service.

**SEC. 9-3-42 GRANTEE RULES.**

A Grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the franchise and to assure uninterrupted service to all its subscribers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Chapter, the Franchise Agreement or state or federal law.

**SEC. 9-3-43 UNAUTHORIZED RECEPTION OR USE OF CABLE SERVICES.**

- (a) **No Unauthorized Use.** It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a Grantee's cable system within the franchise area for the purpose of enabling receiving any television signal, radio signal, picture, program or sound, without payment to the Grantee.
- (b) **No Tampering.** It shall be unlawful for any person, without the Grantee's consent, to willfully tamper with, remove or injure any cables, wires or equipment used by a Grantee for distribution of television signals, radio signals, picture, programs or sound.
- (c) **Penalties.** Any person violating or failing to comply with the provision of this Section shall be subject to a forfeiture for each day of violation or failure to comply, not to exceed three hundred dollars (\$300).

**SEC. 9-3-44 GENERAL.**

- (a) **Compliance with Laws, Rules, And Regulations.** In the event any valid law, rule or regulation of any governing authority or agency having jurisdiction, including but not limited to the FCC, contravenes the provisions of this Chapter subsequent to its adoption, the provisions hereof shall be superseded by any such valid law, rule or regulation to the extent that the provisions hereof are in conflict and contrary to any such law, rule or regulation.
- (b) **Conflicting Ordinances Repealed.** All ordinances or parts of ordinances in conflict with this Chapter are hereby repealed to the extent of any such conflict.
- (c) **Severability.** Should any word, phrase, clause, sentence, paragraph, or portion of this Chapter or a franchise be declared to be invalid by a court of competent jurisdiction, such

adjudication shall not affect the validity of this Chapter and the franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the City Council hereby expressly states and declares that it would nonetheless have passed this Chapter and granted the franchise had it known that any such word, phrase, clause, sentence, paragraph or portion of said Chapter or franchise were invalid.

- (d) **Waiver or Exemption.** The City reserves the right to waive provisions of this Chapter or exempt a Grantee from meeting provisions of this Chapter, if the City determines that such waiver or exemption is in the public interest.
- (e) **Nonenforcement.** Subject to the provisions of the Cable Act, a Grantee shall not be relieved of any obligation to comply with any of the provisions of this Chapter, the Franchise Agreement, or any rule, regulation, requirement or directive promulgated by the City by reason of any failure of the City or its officers, agents or employees to enforce prompt compliance nor shall such be considered a waiver thereof.
- (f) **Force Majeure.** Except as otherwise provided in this Ordinance or the Franchise Agreement, whenever a period of time is provided for, either for the City or the Grantee to do or perform any act or obligation, neither party shall be liable for any delays due to war, riot, insurrection, rebellion, strike, lockout, unavoidable casualty or damage to personnel, materials, or equipment, fire, flood, storm, earthquake, tornado, orders of a court of competent jurisdiction, any act of God, failure of a utility provider to provide pole attachments on reasonable terms or conditions therefor, or any cause beyond the control of said party. In such event, said time period shall be extended for the amount of time said party is so delayed. An act or omission shall not be deemed to be beyond a Grantee's control if committed, omitted, or caused by a corporation or other business entity which holds a controlling interest in the Grantee, whether directly or indirectly. In the case of a vendor caused equipment delay, the burden of proof will be on the Grantee to show that the delay was solely the fault of the vendor and that the vendor was an established equipment provider at the time the order was placed. Further, the failure of a Grantee to obtain financing, or to pay any money due from it to any person, including the City, for whatever reason, shall not be an act or omission which is beyond the control of the Grantee.

## CHAPTER 4

### Storm Water Sewer Districts

- 9-4-1 Storm Water Sewer Districts
- 9-4-2 Districts Not to Be Dissolved
- 9-4-3 Method of Assessment

#### SEC. 9-4-1 STORM WATER SEWER DISTRICTS.

The following storm water districts shall be established:

- (a) **Storm Water Sewer District No. 1.** This district shall comprise all of that portion of the City that on February 23, 1956, was served by a storm water sewer.
- (b) **Storm Water Sewer District No. 2.** This district shall comprise all that portion of the City lying east of the Wisconsin Electric Power Co. right-of-way and north of the present City limits, which is a line 100 feet south and parallel to the south line of the northeast 1/4 of Section 34 and west of South Washington Avenue to a point 100 feet north of the north line of Zeunert Blvd. and contains all of Arthur Buchs Subdivision No. 2, all of Southern Plateau Subdivision, all of K. F. Moldenhauer Subdivision, all of Northern Plateau Subdivision No. 3, Lots 6 through 12 of Block 2, of Northern Plateau Subdivision No. 2, and Lot 4 of Block 2 of Northern Plateau Subdivision.
- (c) **Storm Water Sewer District No. 3.** This district shall comprise all that portion of the City described as follows: Commencing at a point which is 125.0 feet south and 141.0 feet east of the N.E. corner of the S.W. 1/4 of Section 27; thence west on a line which is 158.0 feet south and parallel to the center line of West Bridge Street to the west line of the east 1/2 of the S. W. 1/4 of Section 27; thence south on said west line 1025.0 feet to a point; thence east on a line which is 1183 feet south and parallel to the center line of West Bridge Street (also the south property line of Cloverdale Drive extended) to a point 250.0 feet east of the east line of the S.W. 1/4 of Section 27; (also the east line of North 6th Avenue); thence south on a line parallel and 250.0 feet distant from said east section line to the north property line of Center Street extended; thence east on the north property line of Center Street extended to a point 80' east of the east line of the S.W. 1/4 of Section 27; thence north on a line which is 80.0 feet east and parallel to said east section line to the north property line of Cloverdale Drive; thence east on the north property line of Cloverdale Drive 61.0 feet to a point; thence north on a line which is 141.0 feet east and parallel to said east line of the S.W. 1/4 of Section 27, to the place of beginning being the N.E. corner of Lot 2, Block 2 of Darkow Subdivision.
- (d) **Storm Water Sewer District No. 4.** This district shall comprise all of the West 1/2 of the Northeast 1/4 of Section 34, Township 10 North, Range 21 East in the City of Cedarburg, Ozaukee County, Wisconsin, lying West of the East line of the Wisconsin Electric Power Co. right of way, except that portion Lying South of the Southerly E. W.

- Line of said Northeast 1/4.
- (e) **Storm Water Sewer District No. 5.** This district shall comprise all of Lots one through 10 of Victoria Spring Heights Subdivision.
- (f) **Storm Water Sewer District No. 6.** This district shall comprise all of that portion of the City of Cedarburg described as follows: That part of the S.W. 1/4 and S.E. 1/4 of Section 35, Township 10 North, Range 21 East in the City of Cedarburg, Ozaukee County, Wisconsin: Commencing at the N.E. corner of said S.W. 1/4 of Section 35; thence S. 89E 11' W. along a line 392.11 feet to a point; thence S. 3E 11' W. along a line 233.14 feet to the center line of Hamilton Road and the point of beginning of lands to be described; thence S. 50E 18' E. along said center line 63.31 feet to a point; thence N. 39E 42' E. along a line 200.00 feet to a point; thence S. 50E 18' E. along a line to the Westerly bank of Cedar Creek; thence Southerly along said bank to the center line of Green Bay Road; thence Southeasterly along said center line 60.0 feet to the intersection of Hamilton Road; thence Southerly along the center line of the Green Bay Road 255.0 feet to a point; thence S. 87E 15' W. along a line 535.0 feet to a point; thence S. 7E 15' 24" W. along a line 283.70 feet to a point; thence S. 12E 33' 49" W. along a line 420.75 feet to a point; thence South along a line to a point 330.00 feet North of the South line of said Section 35; thence N. 89E 58' 50" W. along a parallel and 330.00 feet distant from said South line of Section 35 to a point on the East property line of McKinley Boulevard; thence Northerly along said East property line 131.20 feet to a point; thence No. 89E 58' 50" W. along a line 80.00 feet to the West property line of McKinley Boulevard; thence S. 56E 30' W. along a line 175.0 feet to a point; thence No. 89E 58' 50" W. along a line to a point on the Westerly property line of Somerset Avenue; thence S. 9E 22' W. along said Westerly property line 150.00 feet to a point; thence No. 89E 58' 50" W. along a line 600.00 feet to a point on the Easterly right of way line of the C.St. P. & P. R.R.; thence N. 9E 22' E. along said Easterly right of way line 2,296.60 feet to a point; thence S. 72E 52' E. along a line 605.57 feet to a point; thence S. 9E 22' W. along a line 391.0 feet to the south property line of Taft Street; thence S. 72E 47' 30" E. along a line 356.00 feet to a point on the Easterly property line of Van Buren Drive; thence N. 17E 12' 30" E. along said Easterly property line 40.00 feet to a point; thence N. 72E 47' 30" W. along a line 138.68 feet to the S. E. corner of Quarry Height Subdivision, a recorded subdivision in the City of Cedarburg; thence N. 16E 45' E. along the Easterly line of said subdivision 109.90 feet to a point; thence N. 42E 19' 30" E. along the Northeasterly line of said subdivision 195.27 feet to a point; thence N. 60E 26' 48" E. along a line 527.14 feet to a point in the center line of Hamilton Road; thence S. 50E 18" E. along a line 17.67 feet to the point of beginning.

#### **SEC. 9-4-2 DISTRICTS NOT TO BE DISSOLVED.**

The Storm Water Sewer Districts herein, or hereinafter created, shall not be hereafter dissolved, nor shall the owners or parcels of land affected by the districts herein created be taxed or

assessed for the construction, extension or major repair of storm water sewer outside of their respective district, unless any and all assessments paid under and pursuant to this Section shall be made available and repaid to the owners of the parcels so assessed.

**SEC. 9-4-3 METHOD OF ASSESSMENT.**

Whenever the Common Council shall deem it necessary or expedient to construct, extend, make major repairs to surface or storm water sewers in any district, it shall follow the special assessment procedures established by the Wisconsin Statutes and this Code of Ordinances.

**CHAPTER 5** (Ord. 98-25)

Miscellaneous Utilities Regulations

- 9-5-1 Incorporation of Public Service Commission Regulations
- 9-5-2 Assessment for Delinquent Utility Bills
- 9-5-3 Limitations on Sewer and Water Connections Outside Municipal Boundaries

**SEC. 9-5-1 INCORPORATION OF PUBLIC SERVICE COMMISSION REGULATIONS.**

The regulations of the Public Service Commission pertaining to the regulation of electric and water utilities, as amended from time to time, are hereby incorporated by reference. In the event of a conflict between such regulations and the terms of this Title, the regulation of the Public Service Commission shall be deemed to control.

**SEC. 9-5-2 COLLECTION OF ARREARAGES FOR DELINQUENT UTILITY SERVICES.**

- (a) **Collection Procedures.** It is the intent of this ordinance that the Cedarburg Light and Water Commission, operated by the City of Cedarburg, Wisconsin, shall be authorized to collect for arrearages for utility service provided by it, together with any penalty assessed or added thereon, by use of the procedures set forth in Section 66.0809(3) of the Wisconsin Statutes. By this ordinance, the City of Cedarburg, Wisconsin, hereby authorizes use of the Section 66.0809(3) procedures and directs that such use shall be in accordance with the requirements of Section 66.0809(3).
- (b) **Dispute Procedures.**
  - (1) Explanation of Charges. The owner or occupant receiving notice under the provisions of Section 66.0809(3) of the Wisconsin Statutes shall have a right to an explanation of any amounts claimed due in such notice. Such amounts may be disputed at the office of the Cedarburg Light and Water Commission during regular office hours within five (5) days of the date of such notice.
  - (2) Hearing. If the matter of the amounts claimed due in the notice provided under Section 66.0809(3) of the Wisconsin Statutes is not satisfactorily resolved within the five (5) days provided for in Subsection (b)(1), the property owner shall be entitled to a hearing at a meeting of the Cedarburg Light and Water Commission before such amounts are levied as a tax.  
Written notice of the date, time and location of said meeting shall be served on the owner at least three (3) days before said meeting in the same manner as the notice described in Section 66.0809(3) of the Wisconsin Statutes.
- (d) **Lien.** If not paid within the period stated in the notice, such arrears shall become a lien as provided in Sec. 66.0809(3), Wis. Stats., as of the date of the notice of such delinquency and

shall automatically be extended upon the current or next tax roll as a delinquent tax against the property. Such arrears shall not be payable in installments once they have become a lien. All proceedings related to the collection, return and sale of property for delinquent real estate taxes shall apply.

- (e) **Termination of Service.** In addition to any and all other penalties and procedures, the subject premises to which the services have been provided will be subject to termination of service pursuant to the regulations established by the Public Service Commission.

### **SEC. 9-5-3 LIMITATION ON SEWER AND WATER CONNECTIONS OUTSIDE MUNICIPAL BOUNDARIES**

- (a) **City Policy Against Providing Sewer and Water Outside of Municipal Boundaries.** The City's long-standing policy is to provide City services, such as sewer and water, only to City residents and to require those property owners outside the City to annex to the City in order to access City services. The City Council may make exceptions to this policy on a case-by-case basis as set forth in this ordinance.
- (b) **Limitation on Obligation to Serve Outside Municipal Boundaries.** This ordinance shall limit the City's provision of sewer and/or water service outside the City's municipal boundaries. The City shall have no obligation to serve any property outside the corporate limits of the City with sewer and/or water except as provided in this ordinance. This ordinance shall constitute a limitation on the City's obligation to provide sewer and water service outside its municipal boundaries as allowed under Wis. Stat. § 66.0813(3).
- (c) **Existing Sewer Service Outside of Municipal Boundaries.** The City shall continue to provide sewer service to properties located outside the municipal boundaries of the City if those properties are receiving sewer service on the effective date of this ordinance. This includes the Carlson Tool property and the Ice Center properties pursuant to the following Agreements:
  1. Carlson Tool property pursuant to an Agreement dated May 23, 1995;
  2. The Ice Center properties pursuant to an Agreement between the Ozaukee Youth Hockey Organization, Inc. and the City of Cedarburg dated October 11, 2011, and
  3. Both Carlson and the Ice Center properties pursuant to an Intergovernmental Agreement between the City of Mequon, County of Ozaukee and the City of Cedarburg, dated May 23, 1995, as amended on July 15, 1998 and as amended by the Second Amendment to the Intergovernmental Agreement signed by the City of Mequon on October 11, 2011 and by the City of Cedarburg on October 24, 2011.

The City's obligation to provide sewer service outside the City's municipal boundaries shall not extend beyond those properties provided service under this subsection.

- (d) **Existing Water Service Outside of Municipal Boundaries.** The City shall continue to provide water service to properties located outside the municipal boundaries of the City if

those properties are receiving water service on the effective date of this ordinance. This includes:

1. Carlson Tool property pursuant to an Agreement dated May 23, 1995;
2. The Ice Center properties pursuant to an Agreement between the Ozaukee Youth Hockey Organization, Inc. and the City of Cedarburg dated October 11, 2011, and
3. Both Carlson and the Ice Center properties pursuant to an Intergovernmental Agreement between the City of Mequon, County of Ozaukee and the City of Cedarburg, dated May 23, 1995, as amended on July 15, 1998 and as amended by the Second Amendment to the Intergovernmental Agreement signed by the City of Mequon on October 11, 2011 and by the City of Cedarburg on October 24, 2011.
4. Twenty- three specific homes and businesses affected by contamination and provided water connections and service pursuant to the Administrative Order V-W-92-C-161( properties listed on attachment “A” to Order V-W-92-C-161 “Marvin Prochnow Landfill Eligible Residents & Businesses), signed July 13, 1992. The connections required by the Administrative Order were completed effective August 7, 1992 per the EPA Final Pollution Report. No additional service connection or enlargement of the water connections to these homes and businesses is required by the Administrative Order.

The City's obligation to provide water service outside the City's municipal boundaries shall not extend beyond those properties provided service under this subsection.

- (e) **Provision of Service Outside of Municipal Boundaries Discretionary.** The Common Council may, by appropriate motion, authorize connections to the City’s sewer and/or water systems for any property located outside of the City's municipal boundaries on a case-by-case basis. Requests for connection to the City's sewer and water systems must meet the terms of the City's extraterritorial plat review and any applicable water service agreement between the City and an adjacent town, or between the City and a property owner. The property owner shall be primarily liable for the costs and fees of any main extension and lateral work for sewer and/or water connections.
- (f) **Prohibition on Unauthorized Connections.** Every person, including each officer and employee of the City, is prohibited from connecting or aiding and abetting the connection of any sewer or water lateral servicing any property situated outside of the City's municipal boundaries with any existing or hereinafter to be constructed water or sewer main belonging to the City water and sewer systems unless such connection has been authorized by the City Council.