

TITLE 9

Public Utilities

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Water Utility Regulations and Rates

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Article A: Rates

Sec. 9-1-1 Public Fire Protection Service — F-1.

- (a) For public fire protection service to the City of Washburn, the annual charge shall be Forty Thousand Three Hundred Sixty-two Dollars (\$40,362.00) to cover the use of mains and hydrants up to and including the terminal hydrant and connection on each main existing for the 1983 test year.
- (b) For all extensions of fire protection service, a charge of thirty-two cents (32¢) per lineal foot of main shall be charged per annum on the basis of the length of main put into use between hydrants placed, plus a charge of Sixty-three Dollars (\$63.00) net per hydrant added to the system after the base period.
- (c) This service shall include the use of hydrants for fire protection service only and such quantities of water as may be demanded for the purposes of extinguishing fires within the municipal boundary. For all other purposes, the metered or other rates set forth, or as may be filed with the Public Service Commission, shall apply.
- (d) The above base annual charge of Forty Thousand Three Hundred Sixty-two Dollars (\$40,362.00) includes an estimated fifty-three thousand two hundred eighty-three (53,283) feet of distribution main, four (4) inch and larger, and ninety-five (95) hydrants.

Sec. 9-1-2 General Sewer Service — Metered — Smg-1.

- (a) **Availability.** Available for sewerage contributors discharging domestic strength sewage up to two hundred fifty (250) mg per liter BOD and suspended solids.
- (b) **Service and Volume Charge.** Quarterly service charge:

5/8-inch water meter	—	\$ 11.10	3-inch water meter	—	\$ 33.40
3/4-inch water meter	—	\$ 11.90	4-inch water meter	—	\$ 49.30
1-inch water meter	—	\$ 13.50	6-inch water meter	—	\$ 89.00
1-1/4-inch water meter	—	\$ 15.40	8-inch water meter	—	\$ 137.00
1-1/2-inch water meter	—	\$ 17.50	10-inch water meter	—	\$ 200.00
2-inch water meter	—	\$ 22.20	12-inch water meter	—	\$ 264.00
2-1/2-inch water meter	—	\$ 29.40			

Plus volume charge:

For each one thousand (1,000) gallons domestic strength sewage discharged to the sanitary sewer system — One and 28/100 Dollars (\$1.28) per one thousand (1,000) gallons.

- (c) **Billing.** Bills for sewer service are rendered quarterly and become due and payable on the first of the month following the period for which service is rendered. A late payment charge of three percent (3%) but not less than thirty cents (30¢) will be added to bills not paid within twenty (20) days of issuance. This late payment charge is applicable to all customers. The Utility customer may be given a written notice that the bill is overdue no sooner than twenty (20) days after the bill is issued and unless payment or satisfactory arrangements for payment are made within the next eight (8) days, service may be disconnected pursuant to Chapter 185, Wis. Adm. Code.

Sec. 9-1-3 General Service — Metered — Mg-1.

(a) **Quarterly Service Charge:**

5/8-inch meter —	\$ 9.25
3/4-inch meter —	\$ 9.25
1-inch meter —	\$ 20.00
1-1/4-inch meter —	\$ 30.00
1-1/2-inch meter —	\$ 48.00
2-inch meter —	\$ 78.00
2-1/2-inch meter —	\$ 98.00
3-inch meter —	\$ 120.00
4-inch meter —	\$ 140.00
6-inch meter —	\$ 160.00
8-inch meter —	\$ 180.00

(b) **Plus Volume Charge:**

First	25,000	gallons used each quarter - \$ 1.21 per 1,000 gallons.
Next	175,000	gallons used each quarter - \$ 1.09 per 1,000 gallons.
Over	200,000	gallons used each quarter - \$.77 per 1,000 gallons.

- (c) **Billing.** Bills for water service are rendered quarterly and become due and payable upon issuance following the period for which service is rendered. A late payment charge of three percent (3%) but not less than thirty cents (30¢) will be added to bills not paid within twenty (20) days of issuance. This one-time late payment charge will be applied to the total unpaid balance for utility service, including unpaid late payment charges. This late payment charge is applicable to all customers. The Utility customer may be given a written notice that the bill is overdue no sooner than twenty (20) days after the bill is issued. Unless payment or satisfactory arrangement for payment is made within the next eight (8)

days, service may be disconnected pursuant to Chapter PSC 185, Wis. Adm. Code. A Ten Dollar (\$10.00) charge will be made for processing checks that have been returned for insufficient funds.

- (d) **Combined Metering.** When a consumer's premises has several buildings, each supplied with service and metered separately, the full service charge will be billed for each meter separately and the readings will not be cumulated. If these buildings are all used in the same business and are connected by the consumer, they can be metered on one place. If the Utility, for its own convenience, installs more than one meter, the readings will be cumulated for billing.

Sec. 9-1-4 Public Service — Mpa-1.

- (a) Water service supplied to municipal buildings, schools, sewer treatment plants, etc., shall be metered and the regular metered service rates applied.
- (b) Water used on an intermittent basis for flushing service, street sprinkling, flooding skating rinks, drinking fountains, etc., shall be metered where meters can be set to measure the service. Where it is impossible to measure the service, the Utility shall estimate the volume of water used based on the pressure, size of opening and period of time water is allowed to be drawn. The estimated quantity used shall be billed at the rate of seventy-seven cents (77¢) per one thousand (1,000) gallons.

Sec. 9-1-5 Reconnection Charges — R-1.

	During Normal Business Hours	After Normal Business Hours
Reinstallation of meter, including valving at curb stop	\$ 12.00	\$ 18.00
Valve turned on at curb stop	\$ 10.00	\$ 15.00

NOTE: No charge for disconnection.

Sec. 9-1-6 Seasonal, Emergency or Temporary Service — Mgt-1.

- (a) Seasonal customers* shall be served at the general service rate (Schedule Mg-1) except that each customer served under this rate shall pay an annual seasonal service charge equal to four (4) times the applicable quarterly service charge. Water use in any billing period shall

be billed at the applicable volume schedule in Mg-1 and the charge added to the annual seasonal service charge.

- (b) Further, if service has been disconnected, a charge under Schedule R-1 is applied at the time of reconnection.

* Seasonal customers are general service customers whose use of water is normally for recurring periods of less than a year.

Sec. 9-1-7 General Water Service — Unmetered — Ug-1.

- (a) **Service.** Where the Utility cannot immediately install its water meter, service may be supplied temporarily on an unmetered basis. Such service shall be billed at the rate of Twenty-one and 35/100 Dollars (\$21.35) per billing period. This rate shall be applied to only single-family residential and small commercial customers and approximates the cost of ten thousand (10,000) gallons of water per billing period under Schedule Mg-1. If it is determined by the Utility that usage is in excess of ten thousand (10,000) gallons of water per billing period, an additional charge of One and 21/100 Dollars (\$1.21) per one thousand (1,000) gallons will be made for the estimated additional usage.
- (b) **Billing.** Same as Schedule Mg-1.

Sec. 9-1-8 Building and Construction Water Service — Mz-1.

- (a) For single-family and small commercial buildings apply the minimum service charge (Mg-1) for the size of meter to be installed.
- (b) For large commercial, industrial or multiple apartment buildings a temporary metered installation shall be made and general, metered rates (Mg-1) applied.

Sec. 9-1-9 Bulk Water — B-1.

- (a) All bulk water supplied to fill tank trucks or swimming pools from the water system through hydrants or other connections shall be metered. Utility personnel shall supervise the delivery of the water.
- (b)

(1) Service Charge	\$ 10.00 per tank load
(2) Plus Volume Charge	\$ 1.21 per 1,000 gallons

Sec. 9-1-10 Additional Meter Rental Charge — Am-1.

If a customer requests the installation of an additional meter to receive credit for clear water not discharged into the sanitary sewer system, or if a sewerage service customer who is not a

customer of the Water Utility requests the installation of a meter to determine the volume of sewage discharged into the sanitary sewer system, the Utility shall furnish and install this additional meter. A meter installation charge and rental fee shall be charged in accordance with the current rates provided for in the applicable Wisconsin Public Service Commission rates, tariffs, and schedules.

Sec. 9-1-11 through Sec. 9-1-19 Reserved for Future Use.

Article B: Water Utility Operating Rules

Sec. 9-1-20 Compliance with Rules.

All persons now receiving a water supply from the City of Washburn Water Utility, or who may hereafter make application therefor, shall be considered as having agreed to be bound by the rules and regulations as filed with the Public Service Commission of Wisconsin.

Sec. 9-1-21 Establishment of Service.

- (a) Application for water service shall be made in writing on a form furnished by the Water Utility. The application will contain the legal description of the property to be served, name of the owner, the exact use to be made of the service, and the size of the supply pipe and meter desired. (Note particularly any special refrigeration, fire protection, and/or air-conditioning water-consuming appliances).
- (b) Service will be furnished only if:
 - (1) Premises have a frontage on a properly platted street or public strip in which a cast iron or other long-life water main has been laid, or where property owner has agreed to and complied with the provisions of the Utility's filed main extension rule.
 - (2) Property owner has installed or agrees to install a service pipe from the right-of-way line to the point of use, and laid not less than six (6) feet below the surface of an established or proposed grade, and according to Utility's specification, and
 - (3) Premises have adequate piping beyond metering point.
- (c) The owner of a multi-unit dwelling has the option of being served by individual metered water service to each unit. The owner, by selecting this option, is required to provide interior plumbing and meter settings to enable individual metered service to each unit and individual disconnection without affecting service to the other units. Each meter and meter connection will be a separate water utility customer for the purpose of the filed rules and regulations.
- (d) No division of the water service of any lot or parcel of land shall be made for the extension and independent meterage of the supply to an adjoining lot or parcel of land. No division of a water supply service shall be made at the curb for separate supplies therefrom for two (2) or more separate premises having frontage on any street or public service strip whether owned by the same or different parties.
- (e) The Utility is hereby empowered to withhold approval of any application wherein full information of the purpose of such supply is not clearly indicated and set forth by the applicant property owner.

Sec. 9-1-22 Service Contract.

- (a) The minimum service contract period shall be *one (1) year* unless otherwise specified by special contract or in the applicable rate schedule. Where the Utility service has been

disconnected at the customer's request prior to expiration of his/her minimum contract period, a reconnection charge shall be made, payable in advance, when the customer requests reconnection of service. (See Section 9-1-5 for applicable rate.) The minimum contract period is renewed with each reconnection.

- (b) A reconnection charge shall also be required from consumers whose services are disconnected (shut off at curb stop) because of non-payment of bills when due (not including disconnection for failure to comply with deposit or guarantee rules). (See Section 9-1-5 for applicable rate.)
- (c) A consumer shall be considered as the same consumer provided the reconnection is requested for the same location by any member of the same family, or if a place of business, by any partner or employee of the same business.

Sec. 9-1-23 Temporary Metered Supply, Meter and Deposits.

An applicant for temporary water supply on a metered basis shall make and maintain a monetary deposit of not less than Fifteen Dollars (\$15.00) for each meter installed, as security for payment for use of water and for such other charges which may arise from the use of the supply. The charge for setting the valve and furnishing and setting the meter will be Five Dollars (\$5.00), so that of the Fifteen Dollars (\$15.00) deposited, Ten Dollars (\$10.00) will be available to pay for the water used at the scheduled rates.

Sec. 9-1-24 Water for Construction.

- (a) When water is requested for construction purposes, or for filling tanks or other such uses, an application therefor shall be made to the Utility, in writing, upon application provided for that purpose in the Utility's office, giving a statement of the amount of construction work to be done, or the size of the tank to be filled, etc. Payment for the water for construction shall be made in advance at the scheduled rates. The service pipe must be installed inside the building from where the water must be drawn. No connection with the service pipe at the curb shall be made without special permission from the Utility.
- (b) In no case will any employee of the Utility turn on water for construction work unless the contractor first presents a permit. Upon completion of the construction work, the contractor must return the original permit to the Utility, together with a statement of the actual amount of construction work performed.
- (c) Consumers shall not allow contractors, masons or other persons to take water from their premises without first showing a permit from the Department. Any consumer failing to comply with this provision will have water service discontinued.

Sec. 9-1-25 Use of Hydrants for Construction; Temporary Supply.

- (a) In cases where no other supply is available, permission may be granted by the Utility to use a hydrant. No hydrant shall be used until it is equipped with a sprinkling valve. In no case shall any valve be installed or moved except by a member of the Utility.
- (b) Before a valve is set, payment must be made for its setting and for the water to be used at the scheduled rates. Upon completing use of the hydrant, the customer must notify the Utility to that effect.
- (c) In the use of a hydrant supply, the hydrant valve will be set at the proper opening by the Utility when the sprinkling valve is set, and the flow of water must be regulated by means of the sprinkling valve. If the water is to be used through iron pipe connections, all such pipe installations shall have the swing joint to facilitate quick disconnection from the fire hydrant.

Sec. 9-1-26 Operation of Valves and Hydrants; Unauthorized Use of Water; Penalty.

Any person who shall, without authority of the Utility, allow contractors, masons, or other unauthorized persons to take water from their premises, operate any valve connected with the street or supply mains, or open any fire hydrant connected with the distribution system, except for the purpose of extinguishing fire, or who shall wantonly damage or impair the same shall be subject to a fine as provided by municipal ordinances. Permits for the use of hydrants apply only to such hydrants as are designated for the specific use.

Sec. 9-1-27 Refunds of Monetary Deposits.

All moneys deposited as security for payment of charges arising from the use of temporary water supply on a metered basis, or for the return of a sprinkling valve wheel or reducer, if the water is used on an unmetered basis, will be refunded to the depositor on the termination of the use of water, the payment of all charges levied against the depositor, and the return of the wheel and reducer.

Sec. 9-1-28 Service Connections (or Water Laterals).

- (a) No water service shall be laid through any trench having cinders, rubbish, rock or gravel fill, or any other material which may cause injury to or disintegration of the service pipe, unless adequate means of protection are provided by sand filling or such other insulation

as may be approved by the Utility. Service pipes passing through curb or retaining walls shall be adequately safeguarded by provision of a channel space or pipe casing, not less than twice the diameter of the service connection. The space between the service pipe and channel or pipe casing shall be filled and lightly caulked with an oakum, mastic cement, or other resilient material, and made impervious to moisture.

- (b) In backfilling the pipe trench, the service pipe must be protected against injury by carefully hand tamping the ground filling, free from hard lumps, rocks, stones, or other injurious material, around and at least six (6) inches over the pipe.
- (c) All water supplies shall be of undiminished size from the street main in to the point of meter placement. Beyond the meter outlet valve the piping shall be sized and proportioned to provide, on all floors, at all times, an equitable distribution of water supply for the greatest probable number of fixtures or appliances operating simultaneously. All such service shall comply with the provisions of the State Plumbing Code and shall be inspected by the Plumbing Inspector.

Sec. 9-1-29 Service Piping for Meter Settings.

- (a) Where the original service piping is installed for a new metered customer, where existing service piping is changed for the customer's convenience, or where a new meter is installed for an existing unmetered customer, the owner of the premises at his/her expense shall provide a suitable location and the proper connections for the meter. In such instances, a valve shall be installed before and after the meter to assist in the changing of the meter. The Water Utility should be consulted as to the type and size of meter setting. Where it is possible to set meters in the basement, or other suitable place within the building, a short nipple shall be inserted after the stop and waste cock, then a union, and then another nipple and coupling of the proper length. The nipple attached to the union and coupling shall be cut to a standard length provided by the plans of the Utility [the Superintendent may require a horizontal run of eighteen (18) inches in such pipe line] which may later be removed for the insertion of the meter into the supply line.
- (b) No permit will be given to change from metered to flat rate service.

Sec. 9-1-30 Turning on Water.

The water cannot be turned on for a consumer except by a duly authorized employee of the Utility. When a plumber has completed a job, he/she must leave the water turned off. This does not prevent the plumber from testing the work.

Sec. 9-1-31 Failure to Read Meters.

- (a) Where the Utility is unable to read a meter after two (2) successive attempts, the fact will be plainly indicated on the bill, and either an estimated bill will be computed, or the minimum charge applied. The difference shall be adjusted when the meter is again read,

that is, the bill for the succeeding quarter will be computed with the gallons or cubic feet in each block of the rate schedule doubled and credit will be given on that bill for the amount of the minimum bill paid the preceding month. Only in unusual cases or where approval is obtained from the customer shall more than two (2) consecutive estimated bills be rendered.

- (b) If the meter is damaged (see Surreptitious Use of Water) or fails to operate, the bill will be based on the average use during the past year unless there is some reason why the use is not normal. If the average use cannot be properly employed, the bill will be estimated by some equitable method.

Sec. 9-1-32 Complaint Meter Tests.

See Wis. Adm. Code, Chapter PSC 185.77.

Sec. 9-1-33 Thawing Frozen Services.

See Wis. Adm. Code, Chapter PSC 185.89.

Sec. 9-1-34 Curb Stop Boxes.

The customer shall protect the curb stop box in the terrace and shall keep the same free from dirt and other obstructions. The Utility shall not be liable for failure to locate the curb stop box and shut off the water in case of a leak on the consumer's premises.

Sec. 9-1-35 Installation of Meters.

Meters will be furnished and placed by the Utility and are not to be disconnected or tampered with by the consumer. All meters shall be so located that they shall be protected from obstructions and permit ready access thereto for reading, inspection, and servicing, such location to be designated or approved by the Utility. All piping within the building must be supplied by the consumer. Where additional meters are desired by the consumer, he/she shall pay for all piping and an additional amount sufficient to cover the cost of maintenance and depreciation.

Sec. 9-1-36 Repairs to Meters.

- (a) Meters will be repaired by the Water Department and the cost of such repairs caused by ordinary wear and tear will be borne by the Utility.

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- (b) Repair of any damage to a meter resulting from the carelessness of the owner of the premises, his/her agent, or tenant, or from the negligence of any one of them to properly secure and protect same, including any damage that may result from allowing a water meter to become frozen or to be injured from the presence of hot water or steam in the meter, shall be paid for by the consumer or the owner of the premises.

Sec. 9-1-37 Replacement and Repair of Service Pipe.

- (a) Where the property owner requests that a larger service lateral be installed to replace an existing smaller diameter pipe, an allowance of Fifteen Dollars (\$15.00) will be made as a deduction in the cost, providing the new service is to be installed in the same ditch as the existing service pipe.
- (b) The service pipe from the main to and through the curb stop will be maintained and kept in repair and when worn out, replaced at the expense of the Utility. The property owner shall maintain the service pipe from the curb stop to the point of use.
- (c) If an owner fails to repair a leaking or broken service pipe from curb to point of metering or use within such time as may appear reasonable to the Utility after notification has been served on the consumer by the Utility, the water will be shut off and will not be turned on again until the repairs have been completed.

Sec. 9-1-38 Charges for Water Wasted Due to Leaks.

See Wis. Adm. Code, Chapter PSC 185.35(6).

Sec. 9-1-39 Inspection of Premises.

During reasonable hours any officer or authorized employee of the Utility shall have the right of access to the premises supplied with service, for the purpose of inspection or for the enforcement of the Utility's rules and regulations. At least once every twelve (12) months or whenever appropriate, the Utility will make a systematic inspection of all unmetered water taps for the purpose of checking waste and unnecessary use of water. If entry to the premises is denied, the authorized inspector may seek an inspection warrant pursuant to the Wisconsin Statutes.

Sec. 9-1-40 Customer's Deposits.

- (a) **New Residential Service.** The Utility may require a cash deposit or other guarantee as a condition of new residential service if, and only if, the customer has an outstanding

account balance with the Utility which accrued within the last six (6) years, and which at the time of the request for new service remains outstanding and not in dispute.

- (b) **Existing Residential Service.** The Utility may require a cash deposit or other guarantee as a condition of continued service if, and only if, either or both of the following circumstances apply:
- (1) Service has been shut off or discontinued within the last twelve (12) months for violation of these rules and regulations or for nonpayment of a delinquent bill for service which is not in dispute.
 - (2) Credit information obtained by the Utility subsequent to the initial application indicates that the initial application for service was falsified or incomplete to the extent that a deposit would be required under these rules and regulations.
- (c) **Commercial and Industrial Service.** If the credit for an applicant for commercial or industrial service has not been established to the satisfaction of the Utility, he/she may be required to make a deposit or otherwise guarantee to the Utility payment of bills for service.
- (d) **Conditions of Deposit.** See Wis. Adm. Code, Chapter PSC 185.36(4).
- (e) **Refund of Deposits.** The Utility shall review the payment record of each residential customer with a deposit on file at not less than twelve- (12) month intervals and shall not require or continue to require a deposit unless a deposit could be required under the conditions stated above. In the case of a commercial or industrial customer the Utility shall refund the deposit after twenty-four (24) consecutive months of prompt payment if the customer's credit standing is satisfactory to the Utility. Payment shall be considered "prompt" if it is made prior to notice of disconnection for nonpayment of a bill not in dispute. Any deposit or portion thereof refunded to a customer shall be refunded by check unless both the customer and the Utility agree to credit the regular bill or unless service is terminated, in which case the deposit with accrued interest shall be applied to the final bill and any balance returned to the customer promptly.
- (f) **Other Conditions.** A new or additional deposit may be required upon reasonable written notice of the need therefor if such new or additional deposit could have been required under the circumstances when the initial deposit was made. Service may be refused or disconnected for failure to pay a deposit request as provided in the rules. When service has been disconnected for failure to make a deposit, or for failure to pay a delinquent bill, or for failure to comply with the terms of a Deferred Payment Agreement, and satisfactory arrangements have been made to have service restored, a reconnection charge as specified elsewhere in these rules, shall be paid by the customer as a condition to restoration of service.
- (g) **Guarantee Contracts.**
- (1) The Utility may accept, in lieu of a cash deposit, a contract signed by a guarantor satisfactory to the Utility, whereby payment of a specified sum not exceeding the cash deposit requirement is guaranteed. The term of a guarantee contract shall be two (2)

- years, but shall automatically terminate after the customer has closed his/her account, or at the guarantor's request upon thirty (30) days' written notice to the Utility.
- (2) Upon termination of a guarantee contract or whenever the Utility deems same insufficient as to amount or surety, a cash deposit or a new or additional guarantee may be required upon reasonable written notice to the customer. Service to any customer who fails to comply with these requirements may be refused, or upon eight (8) days' written notice, disconnected.
 - (3) The Utility shall mail the guarantor copies of all disconnect notices sent to the customer whose account he/she has guaranteed unless the guarantor waives such notice in writing.
 - (4) In lieu of a cash deposit or guarantee, an applicant for new service who has an outstanding account accrued within the last six (6) years with the Utility shall have the right to receive service from the Utility under a Deferred Payment Agreement as provided in these Rules and Regulations for the outstanding account balance.

Sec. 9-1-41 Disconnection and Refusal of Service.

- (a) **Reasons for Disconnection.** Service may be disconnected or refused for any of the following reasons:
 - (1) Failure to pay a delinquent account or failure to comply with the terms of a Deferred Payment Agreement.
 - (2) Violation of the Utility's rules and regulations pertaining to the use of service in a manner which interferes with the service of others or to the operation of nonstandard equipment, if the customer has first been notified and provided with reasonable opportunity to remedy the situation.
 - (3) Failure to comply with deposit or guarantee arrangements as provided for in these rules and regulations.
 - (4) Diversion of service around the meter.
- (b) **Disconnection for Delinquent Accounts.**
 - (1) A bill for service is delinquent if unpaid after the due date shown on the bill. The Utility may disconnect service for a delinquent bill by giving the customer at least eight (8) calendar days prior to disconnection, a written disconnect notice which may be included with the bill for service. For purposes of this rule, the due date shall not be less than twenty (20) days after issuance.
 - (2) The Utility may disconnect without notice where a dangerous condition exists for as long as the condition exists. Service may be denied to any customer for failure to comply with the applicable requirements of the rules and regulations of the Public Service Commission or of these rules and regulations, or if a dangerous or unsafe condition exists on the customer's premises.

- (3) The Utility shall notify the County Department of Health and Social Services at least five (5) calendar days prior to any scheduled disconnection of residential service if the customer or responsible person has made a written request for this procedure. The Utility shall apprise customers of this right upon application for service.

(c) **Deferred Payment Agreement.**

- (1) The Utility shall offer Deferred Payment Agreements to residential customers. The Deferred Payment Agreement shall provide that service will not be discontinued for the outstanding bill if the customer pays a stated reasonable amount of the outstanding bill and agrees to pay a stated reasonable portion of the remaining outstanding balance in installments until the bill is paid. In determining what amounts are "reasonable," the parties shall consider the:
- Size of the delinquent account.
 - Customer's ability to pay.
 - Customer's payment history.
 - Time that the debt has been outstanding.
 - Reasons why the debt has been outstanding.
 - Any other relevant factors concerning the circumstances of the customer.
- (2) In the Deferred Payment Agreement it shall state immediately preceding the space provided for the customer's signature and in boldface print at least two (2) sizes larger than any other used thereon, the following:

"If you are not satisfied with this agreement, do not sign. If you do sign this agreement you give up your right to dispute the amount due under the agreement except for the Utility's failure or refusal to follow the terms of this agreement."

- A Deferred Payment Agreement shall not include a finance charge.
- If an applicant for service has not fulfilled the terms of a Deferred Payment Agreement, the Utility shall have the right to disconnect service or refuse service in accordance with these rules and under such circumstances, it shall not be required to offer subsequent negotiation of a Deferred Payment Agreement prior to disconnection.
- Any payments made by the customer in compliance with a Deferred Payment Agreement, or otherwise, shall be first considered made in payment of the previous account balance with any remainder credited to the current bill.

(d) **Dispute Procedures.**

- (1) Whenever the customer advises the Utility's designated office prior to the disconnection of service that all or part of any billing as rendered is in dispute, or that any matter related to the disconnection is in dispute, the Utility shall investigate the dispute promptly and completely, advise the customer of the results of the investigation, attempt to resolve the dispute, and provide the opportunity for the customer to enter in to a Deferred Payment Agreement when applicable in order to settle the dispute.

- (2) After the customer has pursued the available remedies with the Utility, he/she may request that the Public Service Commission's staff informally review the disputed issue and recommend terms of settlement.
- (3) Any party to the dispute after informal review may make a written request for a formal review by the Commission. If the Commission decides to conduct a formal hearing on the dispute, the customer must pay fifty percent (50%) of the bill in dispute or post a bond for that amount on or before the hearing date. Failure to pay the amount or post the bond will constitute a waiver of the right to a hearing. Service shall not be disconnected because of any disputed matter while the disputed matter is being pursued under the disputes procedure. In no way does this relieve the customer from the obligation of paying charges which are not disputed.
- (4) The form of disconnection notice to be used is as follows or another form containing the same information:

DISCONNECTION NOTICE

Dear Customer:

The bill enclosed with this notice includes your current charge for Utility service and your previous unpaid balance.

You have 8 days to pay the Utility service arrears or your service is subject to disconnection.

If you fail to pay the service arrears, or fail to contact us within the 8 days allowed to make reasonable time payment arrangements, we will proceed with disconnection action.

To avoid the inconvenience of service interruption and an additional charge of (amount) reconnection, **we urge you to pay the full arrears IMMEDIATELY AT ONE OF OUR OFFICES.**

If you have entered into a Deferred Payment Agreement with us and have failed to make the time payment you agreed to, your service will be subject to disconnection unless you pay the amount due within 8 days.

If you have a reason for delaying the payment, call us and explain the situation. **PLEASE CALL THIS TELEPHONE NUMBER, (appropriate telephone number), IMMEDIATELY IF:**

1. You have a question about your Utility service arrears.
2. You are unable to pay the full amount of the bill and are willing to enter into a time payment agreement with us.
3. There are any circumstances you think should be taken into consideration before service is discontinued.
4. Any resident is seriously ill.

Illness Provision

If there is an existing medical emergency in your home and you furnish the Utility with a statement signed by either a licensed Wisconsin physician, or a public health official, we will delay disconnection of service up to 21 days. The statement must identify the medical emergency and specify the period of time during which disconnection will aggravate the existing emergency.

Deferred Payment Agreements

If, for some reason, you are unable to pay the full amount of the Utility service arrears on your bill, you may contact the Utility to discuss arrangements to pay the arrears over an extended period of time.

This time payment agreement will require:

1. Payment of a reasonable amount at the time the agreement is made.
2. Payment of the remainder of the outstanding balance in monthly installments over a reasonable length of time.
3. Payment of all future Utility service bills in full by the due date.

In any situation where you are unable to resolve billing disputes or disputes about the grounds for proposed disconnection through contacts with our Utility, you may make an appeal to the Wisconsin Public Service Commission, Madison, Wisconsin.

(UTILITY NAME)

Sec. 9-1-42 Surreptitious Use of Water.

- (a) When the Utility has reasonable evidence that a consumer is obtaining his/her supply of water, in whole or in part, by means of devices or methods used to stop or interfere with the proper metering of the utility service being delivered to his/her equipment, the Utility reserves the right to estimate and present immediately a bill for service unmetered as a result of such interference and such bill shall be payable subject to a twenty-four (24) hours

disconnection of service. When the Utility shall have disconnected the consumer for any such reason, the Utility will reconnect the consumer upon the following conditions:

- (1) 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 to the Utility.
 - (2) 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.
 - (3) The consumer must further agree to comply with reasonable requirements to protect the Utility against further losses.
- (b) Sections 98.26 and 943.20, Wis. Stats., as relating to water service, are hereby adopted and made a part of these rules.

Sec. 9-1-43 Vacation of Premises.

When premises are to be vacated, the Utility shall be notified in writing at once, so that it may remove the meter and shut off the supply at the curb cock. 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 Utility of vacancy.

Sec. 9-1-44 Repairs to Mains.

The Utility reserves the right to shut off the water in the mains temporarily, to make repairs, alterations or additions to the plant or system. When the circumstances will permit of sufficient delay, the Utility will give notification, by newspaper publication or otherwise, of the discontinuance of the supply. No rebate will be allowed to consumers for such temporary suspension of supply.

Sec. 9-1-45 Duty of Utility with Respect to Safety of the Public.

It shall be the duty of the Utility to see that all open ditches for water mains, hydrants, and service pipes are properly guarded to prevent accident to any person or vehicle and at night there shall be displayed amber signal light in such manner as will, so far as possible, insure the safety of the public.

Sec. 9-1-46 Handling Water Mains and Service Pipes in Sewer or Other Trenches.

Contractors must ascertain for themselves the existence and location of all water mains and service pipes. When removed, cut or damaged during trench construction, contractors must, at

their own expense, cause them to be replaced or repaired at once. As a goal, contractors should not shut off the water service pipes to any consumer for a period exceeding six (6) hours.

Sec. 9-1-47 Settling Main or Service Trenches.

Trenches in unpaved streets shall be refilled with moist, damp earth, or by means of water tamping. When water tamping is used, the water shall be turned into the trench after the first twelve (12) inches of backfill has been placed and then the trench shall be kept flooded until the remainder of the backfill has been put in.

Sec. 9-1-48 Protective Devices.

- (a) **Protective Devices in General.** The owner or occupant of every premise receiving water supply shall apply and maintain suitable means of protection of the premise supply, and all appliances thereof, against damage arising in any manner from the use of the water supply, variation of water pressure, or any interruption of water supply. Particularly, such owner or occupant must protect water-cooled compressors for refrigeration systems by means of high pressure safety cutout devices. There shall likewise be provided means for the prevention of the transmission of water ram or noise of operation of any valve or appliance through the piping of their own or adjacent premises.
- (b) **Relief Valves.** On all "closed systems" (i.e., systems having a check valve, pressure regulator, or reducing valve, water filter or softener) an effective pressure relief valve shall be installed either in the top tapping or the upper side tapping of the hot water tank, or on the hot water distributing pipe connection at the tank. A one-half (1/2) inch drain pipe shall be connected to the relief valve for discharge on the floor or into a sink or open drain through an air gap. No stop valve shall be placed between the hot water tank and the relief valve or on the drain pipe. (See applicable City plumbing codes).
- (c) **Air Chambers.** An air chamber or approved shock absorber shall be installed at the terminus of each riser, fixture branch, or hydraulic elevator main for the prevention of undue water hammer. The air chamber shall have a diameter not less than that of the pipe it serves and a length not less than fifteen (15) diameters of said supply pipe. Where possible, the air chamber should be provided at its base with a valve and rain cock for water drainage and replenishment of air.

Sec. 9-1-49 Cross Connection Control.

- (a) **Definition.** A cross connection shall be defined as any physical connection or arrangement between two otherwise separate systems, one of which contains potable water from the City

of Washburn 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 system to the other, the direction of flow depending on the pressure differential between the two systems.

- (b) **Cross Connections Prohibited.** 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 Washburn 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 Utility and by the Wisconsin Department of Natural Resources in accordance with Section NR 111.25(3), Wis. Adm. Code.
- (c) **Inspections.** It shall be the duty of the Water Utility 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 re-inspections based on potential health hazards involved shall be as established by the Water Utility and as approved by the Wisconsin Department of Natural Resources.
- (d) **Right to Inspect.** Upon presentation of credentials, the representative of the Water Utility 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 for cross connections. If entry is refused, such representative shall obtain a special inspection warrant under Sec. 66.0119, 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) **Discontinuation of Service.** The Water Utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this Section 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 Section.
- (f) **Immediate Discontinuation.** If it is determined by the Water Utility 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 City Clerk-Treasurer 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) **State Code Adopted.** The City of Washburn adopts by reference the State Plumbing Code of Wisconsin being Chapter H 82, Wis. Adm. Code.

- (h) **Section Not to Supercede Other Ordinances.** This Section does not supercede the State Plumbing Code and any City plumbing ordinances but it supplementary to them.

Sec. 9-1-50 Private Well Abandonment.

- (a) **Purpose.** The purpose of this Section is to prevent contamination of groundwater and to protect public health, safety and welfare by assuring that unused, unsafe or noncomplying wells, or wells which may serve as conduits for contamination, or wells which may be illegally cross-connected to the municipal water system, are properly abandoned.
- (b) **Applicability.** This Section applies to all wells located on premises served by the City of Washburn municipal water system.
- (c) **Definitions.**
- (1) **Municipal Water System.** A community water system owned by a city, village, county, town, town sanitary district utility district or a federal, state, county, or municipal owned institution for congregate care or correction, or a privately owned water utility serving the foregoing.
 - (2) **Non-Complying.** A well or pump installation which does not comply with NR 812.42, Wis. Adm. Code, *Standards for Existing Installations*, and which has not been granted a variance pursuant to NR 812.43, Wis. Adm. Code.
 - (3) **Pump Installation.** The pump and related equipment used for withdrawing water from a well including the discharge piping, the underground connections, pitless adapters, pressure tanks, pits, sampling faucets and well seals or caps.
 - (4) **Unsafe.** A well or pump installation which produces water which is bacteriologically contaminated or exceeds the drinking water standards of NR 812.06, Wis. Adm. Code, or for which a Health Advisory has been issued by the Wisconsin Department of Natural Resources.
 - (5) **Unused.** A well or pump installation which is not in use or does not have a functional pumping system.
 - (6) **Well.** An excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater for consumption or other use.
 - (7) **Well Abandonment.** The filling and sealing of a well according to the provisions of NR 812.26, Wis. Adm. Code.
- (d) **Abandonment Required.** All wells located on premises served by the municipal water system shall be abandoned in accordance with the terms of this Section and Ch. NR 812, Wis. Adm. Code, by ___(date)___ or no later than one (1) year from the date of connection to the municipal water system, whichever occurs last, unless a well operation permit has been obtained by the well owner from the City of Washburn Sewer and Water Committee or Common Council.

- (e) **Well Operation Permit.** The City of Washburn Sewer and Water Committee or Common Council may grant a permit to a private well owner to operate a well for a period not to exceed five (5) years providing the conditions of this Section are met. An owner may request renewal of a well operation permit by submitting information verifying that the conditions of this Section are met. The City of Washburn Sewer and Water Committee or Common Council or its agent may conduct inspections or have water quality tests conducted at the applicant's expense to obtain or verify information necessary for consideration of a permit application or renewal. Permit applications and renewals shall be made on forms provided by the Plumbing Inspector. The following conditions must be met for issuance or renewal of a well operation permit:
- (1) The well and pump installation meet or are upgraded to meet the requirements of Ch. NR 812.42, Wis. Adm. Code.
 - (2) The well construction and pump installation have a history of producing bacteriologically safe water as evidenced by at least two (2) samplings taken a minimum of two (2) weeks apart. No exception to this condition may be made for unsafe wells, unless the Wisconsin Department of Natural Resources approves, in writing, the continued use of the well.
 - (3) There are no cross-connections between the well and pump installation and the municipal water system.
 - (4) The proposed use of the well and pump installation can be justified as being necessary in addition to water provided by the municipal water system.
- (f) **Abandonment Procedures.**
- (1) All wells abandoned under the jurisdiction of this Section or rule shall be abandoned according to the procedures and method of NR 812.26, Wis. Adm. Code. All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.
 - (2) The owner of the well, or the owner's agent, shall notify the Clerk-Treasurer or Plumbing Inspector at least forty-eight (48) hours prior to commencement of any well abandonment activities. The abandonment of the well shall be observed by a Sewer and Water Committee representative.
 - (3) An abandonment report form, supplied by the Wisconsin Department of Natural Resources, shall be submitted by the well owner to the Clerk-Treasurer and the Department of Natural Resources within ten (10) days of the completion of the well abandonment.
- (g) **Penalties.** In addition to any forfeiture imposed by Section 1-1-7, if any person fails to comply with this Section for more than thirty (30) days after receiving written notice of the violation, the municipality may impose a penalty and cause the well abandonment to be performed and the expense to be assessed as a special tax against the property.

Sec. 9-1-51 through Sec. 9-1-99 Reserved for Future Use.

Article C: Extension of Utility Service Outside

Sec. 9-1-100 Extension of Utility Service — Town of Barksdale.

- (a) The Washburn Water Utility shall be authorized to provide water service to certain residents within the Town of Barksdale pursuant to the provisions of the "January 23, 2004 Agreement Between the City of Washburn, the Town of Barksdale, and E.I. Dupont de Nemours and Company Regarding Provision of Municipal Water", approved by the Common Council on January 26, 2004.
- (b) The service area within which water service will be provided is delineated on the map which is Appendix A to that Agreement. The City of Washburn shall have no obligation to serve beyond the area so delineated.
- (c) The delineated area may be enlarged by subsequent ordinance.

Title 9 ► Chapter 2

Sewer Utility Regulations and Service Charges

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9-2-2	Management and Operation of Sewer System
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9-2-19	Charges a Lien on Property
9-2-20	Unit of Service Definition
9-2-21	Adoption of Other Rules

Sec. 9-2-1 Definitions.

The following definitions are applicable to this Chapter:

- (a) **Biochemical Oxygen Demand (BOD).** The quantity of oxygen utilized in the biochemical oxidation of organic matter in five (5) days at twenty degrees Centigrade (20°C), expressed as milligrams per liter. Quantitative determination of BOD shall be made in accordance with procedures set forth in "Standard Methods".
- (b) **Building Drain.** That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer.

- (c) **Building Sewer.** The extension from the building drain to the public sewer or other place of disposal beginning outside the inner face of the building wall.
- (d) **Garbage.** The residue from the preparation, cooking, and dispensing of food, and from the handling, storage, and sale of food products and produce.
- (e) **Industrial Waste.** The wastewater from industrial process, trade, or business, as distinct from sanitary sewage, including cooling water and the discharge from sewage pretreatment facilities.
- (f) **Person.** Any and all persons, including any individual, firm, company, municipal or private corporation, association, society, institution, enterprise, governmental agency, or other entity.
- (g) **pH.** The logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of the hydrogen-ions, in grams per liter of solution. Neutral water, for example, has a pH value of seven (7) and hydrogen-ion concentration of 10^{-7} .
- (h) **Sanitary Sewer.** A sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with minor quantities of ground, storm and surface waters that are not admitted intentionally.
- (i) **Shock.** Any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration of flows during normal operation and shall adversely affect the system and/or performance of the wastewater treatment works.
- (j) **Standard Methods.** The examination and analytical procedures set forth in the most recent edition of "Standard Methods for the Examination of Water, Sewage, and Industrial Wastes" published jointly by the American Public Health Association, the American Water Works Association, and the Federation of Sewage and Industrial Wastes Associations.
- (k) **Storm Drain (sometimes termed "storm sewer").** A drain or sewer for conveying water, ground water, subsurface water or unpolluted water from any source.
- (l) **Suspended Solids.** Solids that either float on the surface of, or are in suspension in, water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in "Standards Methods for Examination of Water and Wastewater" and is referred to as nonfilterable residue.
- (m) **Wastewater.** The spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions; together with any ground water, surface water, and stormwater that may be present, but not intentionally admitted.
- (n) **Wastewater Treatment Works.** An arrangement of devices and structures for treating wastewater, industrial wastes, and sludge. Sometimes used as synonymous with waste treatment.
- (o) **Watercourse.** A natural or artificial channel for the passage of water, either continuously or intermittently.

- (p) **Wisconsin Pollutant Discharge Elimination System (WPDES) Permit.** A document issued by the Wisconsin State Department of Natural Resources which establishes effluent limitations and monitoring requirements for the municipal wastewater treatment facility.

Sec. 9-2-2 Management and Operation of Sewer System.

- (a) **Management.** The management, operation, and control of the sewer system for the City of Washburn is vested in the Common Council of said City; all records, minutes and all written proceedings thereof shall be kept by the Clerk-Treasurer of the City of Washburn; the Clerk-Treasurer of the City shall keep all the financial records.
- (b) **Specific Powers.** The Common Council of the City of Washburn shall have the power to construct sewer lines for public use, and shall have the power to lay sewer pipes in and through the alleys, streets, and public grounds of the City of Washburn; and generally, to do all such work as may be found necessary or convenient in the management of the sewer system. The City of Washburn shall have power by themselves, their officers, agents, and servants, to enter upon any land for the purpose of making examination or supervise in the performance of their duties under this Chapter, without liability therefore; and the Common Council shall have power to purchase and acquire for the City of Washburn all real and personal property which may be necessary for construction of the sewer system or for any repair, remodeling, or additions thereto.
- (c) **Condemnation of Real Estate.** Whenever any real estate or any easement therein, or use thereof, shall in the judgment of the Common Council be necessary to the sewer system; and whenever, for any cause, an agreement for the purchase thereof cannot be made with the owner thereof, the Common Council shall proceed with all necessary steps to take such real estate easement, or use by condemnation in accordance with Wisconsin Statutes and the Uniform Relocation and Real Property Acquisition Policy Act of 1970, if federal funds are used.
- (d) **Title to Real Estate and Personalty.** All property, real, personal, and mixed, acquired for the construction of the sewer system, and all plans, specifications, diagrams, papers, books and records connected therewith said sewer system, and all buildings, machinery, and fixtures pertaining thereto, shall be the property of said City of Washburn.

Sec. 9-2-3 User Rules and Regulations.

- (a) **Generally.** The rules, regulations, and sewer rates of the City of Washburn hereinafter set forth shall be considered a part of the contract with every person, company or corporation who is connected with the sewer system of the City of Washburn and every such person, company, or corporation by connecting with the sewer system shall be considered as

expressing his/her or their assent to be bound thereby. Whenever any of said rules and regulations, or such others as the said City of Washburn may hereafter adopt are violated, the service shall be shut off from the building or place of such violation [even though two (2) or more parties are receiving service through the same connection], and shall not be re-established except by order of the Common Council, and on payment of all arrears, the expenses and established charges of shutting off and putting on, and such other terms as the City of Washburn may determine, and a satisfactory understanding with the party that no further cause for complaint shall arise. In case of such violation, the said City furthermore may declare any payment made for the service by the party or parties committing such violation to be forfeited, and the same shall thereupon be forfeited. The right is reserved to Common Council to change the said rules, regulations, and sewer rates from time to time as they may deem advisable; and to make special rates and contracts in all proper cases.

- (b) **Applicability.** The following rules and regulations in Sections 9-2-4 through 9-2-8 for the government of licensed plumbers, sewer users, and others, are hereby adopted and established.

Sec. 9-2-4 Plumbers.

No plumber, pipe fitter, or other person will be permitted to do any plumbing or pipe fitting work in connection with the sewer system without first receiving a license from the State of Wisconsin.

Sec. 9-2-5 User Regulations.

(a) **Application for Service.**

- (1) Every person connecting with the sewer system shall file an application in writing to the Public Works Director, in such forms as is prescribed for that purpose. Blanks for such applications will be furnished at the office of the City Clerk-Treasurer. The application must state fully and truly all the use which will be allowed except upon further application and permission regularly obtained from said Public Works Director. If the applicant is not the owner of the premises, the written consent of the owner must accompany the application. Persons connected to the sewer system of the City of Washburn are referred to herein as "Users".
- (2) The application may be for service to more than one building, or more than one unit of service through one service connection; and in such case, charges shall be made accordingly.
- (3) If it appears that the service applied for will not provide adequate service for the contemplated use, the Public Works Director may reject the application. If the Public

Works Director shall approve the application, he/she shall issue a permit for services as shown on the application.

- (b) **Payment for Connection Application.** Prior to the issuance of the application for service, all users that were not a part of the original project and did not pay a special assessment or contribution will be required to make a payment to the utility as follows:

- (1) Subdivision developers shall be responsible, where the main extension has been approved by the Utility, for the water service lateral installation costs from the main through the curb stop and box and for the sewer lateral installation costs from the main to the property line.
- (2) When the cost of a Utility main extension is to be collected through assessment by the municipality, the water lateral installation costs from the main through the curb stop and box and the sewer lateral installation costs from the main to the property line shall be included in the assessment of the appropriate properties.
- (3) The initial water and sewer lateral(s), not installed as part of a subdivision development or an assessable utility extension, will be installed from the main through the curb stop and box (property line for sewer laterals) by the utility, for which there will be made a charge as follows:

3/4-inch or 1-inch copper water service	\$ 475.00
4-inch sewer service	\$ 600.00
Larger sized services	Actual Cost

- (4) The connection charge as filed shall be paid in advance.
 - (5) If excavation is performed by the customer, the associated expense will be deducted from above-stated charge.
 - (6) If the lateral construction cost to the utility exceeds the above amount, then the user will be required to pay the former cost.
- (c) **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 exhibit the proper permit for the same from the Public Works Director.
- (d) **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 sewer system.
- (e) **User Use Only.** No user shall allow others or other services to connect the sewer system through his/her lateral.
- (f) **User to Permit Inspection.** Every user shall permit the Public Works Director, or his/her 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.

- (g) **Utility Responsibility.** It is expressly stipulated that no claim shall be made against said City of Washburn by reason of the breaking, clogging, stoppage, or freezing of any service pipes; nor from any damage arising from repairing mains, making connections or extensions or any other work that may be deemed necessary. The right is hereby reserved to 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 any district of the said City, the City shall, if practicable, give notice to each and every consumer within such effected district of the time when such service will be so shut off.
- (h) **Prohibited or Regulated Substances.** No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:
- (1) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.
 - (2) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant.
 - (3) Any unused medications of any kind, whether prescription or not.
 - (4) Any waters or wastes having a pH lower than six (6), or higher than nine (9), or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
 - (5) 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 any aspect of the sewage collection or treatment 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, animal wastes, and paper dishes, cups, milk containers, sanitary napkins, disposable diapers, etc., either whole or ground by garbage grinders.
 - (6) Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two degrees (32°) and one hundred and fifty degrees (150°).
 - (7) Any garbage that has not been properly ground.
 - (8) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions, whether neutralized or not.
 - (9) Any waters or wastes containing iron, chromium, nickel, copper, zinc, and similar objectionable or toxic substances or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment plant exceeds the limits established by the City of Washburn or the Wisconsin Department of Natural Resources (DNR) for such materials.

- (10) Any waters or wastes containing phenols or other taste or odor-producing substances, in such concentrations exceeding limits which may be established by the City of Washburn or the Wisconsin Department of Natural Resources as necessary, after treatment of the composite sewage, to meet the requirement(s) of State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.
- (11) Any radioactive wastes or isotopes of such half life or concentration as may exceed limits established by the City of Washburn or the Wisconsin Department of Natural Resources in compliance with applicable State or Federal regulations.
- (12) Materials which exert or cause:
 - a. Unusual concentrations of inert suspended solids (such as, but not limited to, Fuller's earth, lime slurries, lime residues, etc.) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
 - b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).
 - c. BOD, chemical oxygen demand, phosphorus, nitrogen, or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment facility.
 - d. Unusual volume of flow or concentration of wastes constituting a slug as defined herein.
- (13) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of the agencies having jurisdiction over discharge to the receiving waters.
 - (i) **Discharge of Prohibited or Regulated Substances.** If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, and if they contain the substances or possess the characteristics enumerated in Subsection (h), the City may undertake any one (1) or more of the following actions, as well as any other action permitted by law:
 - (1) Reject the wastes;
 - (2) Issue a special permit which shall require pre-treatment to an acceptable condition for discharge to the public sewers;
 - (3) Issue a special permit which shall require control over the quantities and rates of discharge; and/or
 - (4) Require payment to cover the added costs of handling and treating the wastes not covered by existing sewage service charges or charges. If the City permits the pre-treatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the City of Washburn and subject to the requirements of all applicable laws.
 - (5) If such waters or wastes are discharged without proper permit, the owner shall pay a forfeiture of not less than One Hundred Dollars (\$100.00) per day and not more than

One Thousand Dollars (\$1,000.00) per day of violation, with each twenty-four (24) hour period in which an unpermitted discharge occurs constituting a separate violation, plus all costs of enforcement and remediation, plus damages sufficient to compensate for the harms caused by the unpermitted discharge.

- (j) **Grease, Oil and Sand Interceptors.** Grease, oil and sand interceptors shall be provided by the owner of any property when, in the opinion of the City Administrator, they are necessary for the proper handling of liquid wastes containing floatable grease in amounts in excess of those specified in Subsection (h), or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the approving authority, and shall be located as to be readily and easily accessible for cleaning and inspection. In maintaining these interceptors, the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates and means of disposal which are subject to review by the approving authority. Disposal of the collected materials performed by the owner's personnel or currently licensed waste disposal firm(s) must be in accordance with currently acceptable Wisconsin Department of Natural Resources rules and regulations.

Sec. 9-2-6 Excavations.

- (a) **Excavation Materials Storage.** In making excavations in streets or highways for laying service pipe or making repairs, the paving and earth removed must be deposited in a manner that will occasion the least inconvenience to the public.
- (b) **Safety Barricades.** No person shall leave any such excavation made in any street or highway open at any time without barricades; and during the night, warning lights must be maintained at such excavations.
- (c) **Refilling of Openings.** In refilling the opening, after the service pipes are laid, the earth must be laid in layers of not more than nine (9) inches in depth, and each layer thoroughly compacted to prevent settling. This work together with the replacing of sidewalks, ballast and paving, must be done so as to make the street as good, at least, as before it was disturbed, and satisfactory to the Public Works Director. No opening of the streets for tapping the pipes will be permitted when the ground is frozen.

Sec. 9-2-7 Tapping the Mains.

- (a) **Authorization Required.** No person, except those having special permission from the Public Works Director, or persons in the Public Works Director's service and approved by the Public Works Director, will be permitted under any circumstances to tap the mains or

collection pipes. The kind and size of the connection with the pipe shall be that specified in the permit or order from said Public Works Director.

- (b) **Tapping Standards.** Pipes should always be tapped on the top-half, and not within six (6) inches [fifteen (15) cm] of the joint, or within twenty-four (24) inches [sixty (60) cm] of another lateral connection.

Sec. 9-2-8 Installation of House Laterals.

- (a) **Plumbing Code Compliance.** All service pipes (laterals) on private property will be installed in accordance with State of Wisconsin Administrative Code Chapter H 82 "Design, Construction, Installation, Supervision and Inspection of Plumbing"; specifically, Section H 82.04(4) "Building Sewers".
- (b) **Inspections.** All building sewers under construction will be inspected by a designated representative of the City of Washburn. The building sewers and/or private interceptor main sewers shall be inspected upon completion of placement of the pipe and before backfilling, and tested before or after backfilling. Any sewer that is backfilled prior to inspection shall be re-excavated to allow said inspection.

Sec. 9-2-9 Septic Tank and Holding Tank Disposal.

- (a) **Septic/Holding Tank Permit.** No person in the business of gathering and disposing of septic tank sludge or holding tank sewage shall transfer such material into any disposal area or sewer manhole located within the City of Washburn boundaries unless a permit for disposal has been first obtained from the Board. Written application for this permit shall be made to the Board and shall state the name and address of the applicant; the number of its disposal units; and the size, make, model, and license number of each unit. Permits shall be non-transferrable except in the case of replacement of the disposal unit for which a permit shall have been originally issued. The permit may be obtained upon payment of a fee [Twenty-five Dollars (\$25.00) per calendar year]. The Board may impose such conditions as it deems necessary on any permit granted.
- (b) **Disposal Charges.** Charges for a disposal shall be Three and 72/100 Dollars (\$3.72) per one thousand (1,000) gallons. Bills shall be mailed on a monthly basis and if payments are not received in thirty (30) days thereof, disposal privileges shall be suspended.
- (c) **Liability Insurance.** Any person or party disposing of septic tank or holding tank sludge agrees to carry public liability insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) to protect any and all persons or property from injury and/or damage caused in any way or manner by any act, or failure to act, by any of his employees. The person(s) shall furnish a certificate certifying such insurance to be in full force and effect.

- (d) **Domestic Origin Waste.** Any materials dumped into the treatment system shall be of domestic origin only and shall comply with the provisions of any and all applicable ordinances of the City; users shall not deposit or drain any gasoline, oil, acid, alkali, grease, rags, waste, volatile or inflammable liquids, or other deleterious substances into any manhole nor allow any earth, sand, or other solid material to pass into any part of the sewerage system.
- (e) **Indemnification.** The person(s) or party disposing waste agrees to indemnify and save harmless the City of Washburn from any and all liability and claims for damages arising out of or resulting from work and labor performed.
- (f) **Bond.** The person(s) or party disposing waste shall furnish bond to the City of Washburn in amount of One Thousand Dollars (\$1,000.00) to guarantee performance. Said performance bond shall be delivered to the Clerk-Treasurer prior to the issuance of the permit hereunder.

Sec. 9-2-10 Sewer User Charge System.

- (a) **Revenue Standard.** It shall be the policy of the City of Washburn to obtain sufficient revenues to pay the cost of:
 - (1) The annual debt retirement payment on any bonded indebtedness;
 - (2) Any required cash reserve account payment; and
 - (3) Operation and maintenance of the sewage works, including a replacement fund (i.e. a cash account to be used for future expenditures for obtaining or installing equipment, accessories or appurtenances which are necessary to maintain the capacity and performance of the sewage works during the service life for which such works were designed and constructed), through a system of user charges as defined in this Section. The system shall assure that each user of the sewage works pays a proportionate share of the cost of such works.
- (b) **User Classification.** All sewer users shall be classified by the utility as;
 - (1) Residential/commercial (domestic strength); or
 - (2) Industrial customers.
- (c) **Billing System.** User charges shall consist of:
 - (1) A minimum quarterly billing, on the basis of user charge factors; and
 - (2) A unit price per volume of water utilized.
- (d) **Debt Retirement; Reserve Account.** The minimum quarterly billing shall be sufficient to pay the annual debt retirement and rural services reserve account costs. A portion of the debt service and Reserve Account may be budgeted by levying an ad valorem tax in accordance with State Statutes. The unit price per volume shall be sufficient to pay the annual cost of operation and maintenance, including any replacement fund, of the sewage works. Users will be notified annually of the portion of user charges or ad valorem taxes

attributable to wastewater treatment services. Water meter readings shall be used to determine the actual water volume used. The unit price portion of the third quarter (i.e. July - September) sewer bill will be based on the average volume of water used during the previous second, first and fourth quarter, except that no "zero" usage quarter will be averaged. All other quarterly sewer bills will be based on actual water used. If a portion of the water furnished to any customer is not discharged into the sewer system, the quantity of such water will be deducted in computing the charge for sewer service, provided a meter has been installed to measure such water. The customer must at his own expense make necessary changes in the water piping and install couplings so that a meter can be set. A charge for the actual cost of providing a meter shall be paid by the customer.

- (c) **User Charge Methodology.** The methodology of determining the user charges is given in Appendix A, incorporated herein by reference and on file with the Clerk-Treasurer. The Utility shall provide the initial estimates of water volumes, number of meters, costs, etc., to calculate the first year's user charges. The user charges, and this Chapter, shall be reviewed not less than biannually. Such review shall be performed by the Common Council and the City Clerk-Treasurer. User charges shall be adjusted, as required, to reflect actual volumes of water used and actual costs.
- (f) **Meter Readings Not Possible.** Where it is not possible to obtain a water meter reading, or in cases where no water meter exists, the customer shall be assigned an average water volume by the City of Washburn, based on previous meter readings, and this shall be so stated on the bill. The difference shall be adjusted when the meter is again read.

Sec. 9-2-11 Sewer Rates.

- (a) **Quarterly Charges.** There shall be charged to each user of the sewer system a sewer charge as follows:
- (1) A minimum quarterly charge based on the size of water meter in service as per the following schedule:

Meter Size	Type	Minimum Quarterly Charges
5/8" Meter	Sewer	68.52
3/4" Meter	Sewer	68.52
1" Meter	Sewer	73.13
1 1/4" Meter	Sewer	77.08
1 1/2" Meter	Sewer	81.69

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2" Meter	Sewer	90.91
3" Meter	Sewer	113.97
4" Meter	Sewer	140.00
Unmetered	Sewer	178.00

- (2) A variable volume charge based on the amount of water consumed, as defined in Section 9-2-9(b), of Six and 79/100 Dollars (\$6.79) per one thousand (1,000) gallons per quarter.
- (3) The sewer system rates within this Subsection (a) shall become effective with the April, 2006 utility billing period.
- (b) **Payment.** All charges for sewerage service shall be made quarterly and shall be payable on the first (1st) day of January, April, July, and October in each year. A one and one-half percent (1-1/2%) per month penalty will be added to those bills not paid on or before the twentieth (20th) day after the due date of the bill with a thirty cent (30¢) minimum penalty charge. A failure to receive a bill shall not excuse non-payment. Sewerage service charges shall be a lien on the property served in accordance with Sec. 66.076(7), Wis. Stats.
- (c) **Excess Revenues.** Excess revenues collected from a user class will be applied to operation, maintenance, and replacement costs attributable to that class for the next year.
- (d) **Pre-Existing Agreements.** The User Charge System takes precedence over pre-existing agreements inconsistent with the governing regulations of the Wisconsin Fund Grant Program.

Sec. 9-2-12 Mandatory Connection.

- (a) **Connection Compliance.** The owner of each parcel of land adjacent to a sewer main on which there exists a building usable for human habitation or in a block through which such system is extended, shall connect to such system within one hundred eighty (180) days of notice in writing from the City Clerk. Upon failure to do so the City may 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 notice shall be assessed as a special tax lien against the property, all pursuant to Sec. 281.45, Wis. Stats., provided, however, that the owner may within thirty (30) days after the completion of the work file a written opinion with the City Clerk stating that he/she cannot pay such amount in one (1) sum and ask that there be levied in not to exceed five (5) equal installments and that the amount shall be so collected with interest at the maximum rate per annum provided in Sec. 281.45, Wis. Stats., from the completion of the work, the unpaid balance being a special tax lien, all pursuant to Sec. 281.45, Wis. Stats.

(b) **Penalty.**

- (1) The City may cause such penalties to be assessed as are provided in Section 9-5-7(c).
- (2) This Chapter ordains that the failure to connect to the sewer system is contrary to the minimum health standards of said City of Washburn and fails to assure preservation of public health, comfort, and safety of said City of Washburn.

Sec. 9-2-13 Maintenance of Services.

- (a) **Owner's Responsibility.** The owner of any property served by the sewer system shall maintain sewer service from the main to the premises and including all controls and connections between the same, without expense to the City of Washburn, except when such facilities are damaged as a result of negligence or carelessness on the part of the City of Washburn. All sewer services must be maintained free of defective conditions, by and at the expense of the owner or occupant of the property.
- (b) **When New Installation Required.** When any sewer service is to be relaid and there are two (2) or more buildings on such service, each building shall be disconnected from such service and a new sewer service shall be installed for each building.

Sec. 9-2-14 Penalty for Improper Use.

- (a) **Improper Injury to System.** It shall be unlawful for any person to willfully injure the sewer system, or any building, machinery, or fixture pertaining thereto, or, to willfully and without authority of the Public Works Director, bore or otherwise cause to leak, any tunnel, aqueduct, reservoir, pipe or other thing used in the system for holding, conveying, or collecting sewage.
- (b) **Improper Discharges.** It shall be unlawful for any person to introduce sewage into the system which shows an excess of a BOD or suspended solids concentration of over _____ mg/l (normal domestic sewage); a surcharge shall be based on the excess of BOD or suspended solids at a rate of \$_____/pound. The City of Washburn reserves the right to test the sewage at any point within the connection system of the user or consumer. A user may not use dilution as a means to achieve a lower concentration of BOD or suspended solids. Users discharging toxic pollutants shall pay for any increased O & M or replacement costs caused by the toxic pollutants.
- (c) **Prohibited Discharges.** No user shall discharge or cause to be discharged any of the following described liquids or solid wastes to any sanitary sewer:
 - (1) Any storm water, surface water, ground water, roof run-off or surface drainage.
 - (2) Any gasoline, benzene, Naptha, fuel oil, or other flammable or explosive liquid, solid or gas.

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- (3) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feather, tar, plastics, wood, paunch manure, or any other solid or sticky substance capable of causing obstruction of the flow in sewers or other interference with the proper operation of the sewage works.
- (4) Any water or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans and animals or create any hazard in the receiving treatment facility.
- (5) Any water or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such material at the sewage treatment plant.
- (6) Any noxious or malodorous gas or substance capable of creating a public nuisance.
- (7) Any garbage that has not been properly shredded.
- (8) Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit (150°F).
- (9) Any water or wastes which may contain more than one hundred (100) parts per million by weight of fat, oil, or grease.
- (10) Any water or wastes having pH lower than five and one-half (5.5) or higher than nine (9.0) having any corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

Sec. 9-2-15 Damage Recovery.

In addition to any other penalty provided by this Chapter or other law, the City of Washburn shall have the right of recovery from any responsible persons of any expense incurred by the City for penalties imposed on the City due to a violation of this Chapter or other law, correction of conditions impairing the proper operation of the sewer system and the repair or replacement of any sewer pipe or other property of the sewer system damaged in any manner by any negligent or intended act or omission by such person or by others under their control.

Sec. 9-2-16 Penalties.

Any person who shall violate any of the provisions of this Chapter or rules or regulations of the City of Washburn; or who shall connect a service pipe without first having obtained a permit therefore; or who shall violate any provisions of the Wisconsin Statutes, Wisconsin Administrative Code, or any other materials which are incorporated by reference, shall upon conviction thereof forfeit not less than Ten Dollars (\$10.00) nor more than Two Hundred Dollars (\$200.00) and the costs of prosecution. This, however, shall not bar the City from enforcing the connection duties set out in Section 9-2-11 for mandatory connection.

Sec. 9-2-17 Septic Tanks Prohibited.

The maintenance and use of septic tanks and other private sewage disposal systems within the area of the City of Washburn serviced by its sewer system are hereby declared to be a public nuisance and a health hazard. From and after one (1) year from December 4, 1995, the use of septic tanks or any private sewage disposal system within the area of the City serviced by the sewerage system shall be prohibited.

Sec. 9-2-18 Vacating of Premises and Discontinuance of Service.

Whenever premises served by the system are to be vacated, or whenever any person desires to discontinue service from the system; the system must be notified in writing. The owner of the premises shall be liable for any damages to the property or such damage which may be discovered having occurred to the property of the system other than through the fault of the system or its employees, representatives, or agents.

Sec. 9-2-19 Charges a Lien on Property.

All sewer services, charges, and special assessments shall be a lien on a lot, part of a lot, or land on which sewer services were supplied. All sums which have accrued during the preceding year and which are unpaid by the first (1st) day of October of any year, shall be certified to the City Clerk-Treasurer to be placed on the tax roll for collection as provided by Wisconsin Statutes.

Sec. 9-2-20 Unit of Service Definition.

- (a) **Service Unit Determination.** A unit of service shall consist of any residential, commercial, industrial, or charitable aggregation of space or area occupied for a distinct purpose such as a residence, apartment, flat, store, office, industrial plant, church, or school. Each unit of service shall be regarded as one (1) consumer. Suites in houses, or apartments with complete housekeeping functions (such as cooking), shall be classed as apartment houses; thus houses and apartments having suites of one (1), two (2), or more rooms with toilet facilities, but without kitchen for cooking, are classed as rooming houses.
- (b) **Separate Rates for Mixed Uses.** When a consumer's premises has several buildings for which services are eligible and such buildings are used in the same business and connected by the user, the City shall set a separate rate for such complex.

Sec. 9-2-21 Adoption of Other Rules.

There is hereby adopted all the rules and regulations of the State Plumbing and State Building Codes and the building rules of the Wisconsin Department of Commerce, and the Department of Natural Resources of the State of Wisconsin insofar as the same are applicable to the City of Washburn. All extensions of the system will comply with Administrative Rules NR 108 and NR 110 of the Wisconsin Department of Natural Resources, as amended or renumbered, and by any successor agency.

Title 9 ► Chapter 3

Cable Television

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Sec. 9-3-1 Short Title.

This Chapter shall be known and may be cited as the "Washburn Cable Television Ordinance," hereinafter "Ordinance," "Franchise" or "Chapter."

Sec. 9-3-2 Definitions.

For purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein:

- (a) **Basic Service.** All Subscriber services provided by the Grantee in one (1) or more service tiers, which includes the delivery of local broadcast stations, and public, educational and government access channels. Basic service does not include optional program and satellite service tiers, a la carte services, per channel, per program, or auxiliary services for which a separate charge is made. However, the Grantee may include other satellite signals on the Basic tier.
- (b) **Cable Service.** Means:
 - (1) The transmission to subscribers of video programming, or other programming services; and
 - (2) Subscriber interaction, if any, that is required for the selection or use of such video programming or other programming services.

- (c) **Cable System (or "System" or "Cable Television System").** A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:
- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
 - (2) A facility that serves Subscribers without using any public right-of-way;
 - (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act, except that such facility shall be considered a Cable System, other than for purposes of Section 621(c) to the extent such facility is used in transmission of video programming directly to Subscribers; or
 - (4) Any facilities of any electric utility used solely for operating its electric utility system.
- (d) **City.** The City of Washburn, Wisconsin.
- (e) **Class IV Channel.** A signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.
- (f) **Control and/or Controlling Interest.** Actual working control or ownership of a System in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any Person or Entity (except underwriters during the period in which they are offering securities to the public) of forty percent (40%) or more of a Cable System or the Franchise under which the System is operated. A change in the control or controlling interest of an Entity which has control or a controlling interest in a Grantee shall constitute a change in the control or controlling interest of the System under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one Person or Entity.
- (g) **Converter.** An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than twelve (12) channels delivered by the system at designated converter dial locations.
- (h) **Dwelling Unit.** Any building or part of a building that is used as a home or residence.
- (i) **FCC.** The Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (j) **Franchise.** An initial authorization, or renewal thereof, issued by the City, as the franchising authority, to a Grantee to construct or operate a Cable System.
- (k) **Franchise Agreement.** A contractual agreement entered into between the City and any Grantee hereunder that is enforceable by the City and by the Grantee, and which sets forth the rights and obligations between the City and the Grantee in connection with the Franchise.
- (l) **Grantee.** A person or entity to whom or which a Franchise under this Chapter is granted by the City, along with the lawful successors or assigns of such person or entity.

- (m) **Gross Revenues.** All revenue collected by the Grantee arising from or attributable to the provision of cable service by the Grantee within the City including, but not limited to: periodic fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; franchise fees; installation and reconnection fees; leased channel fees; converter rentals and/or sales; program guide revenues; late or administrative fees; upgrade, downgrade or other change-in-service fees; local advertising revenues; revenues from home shopping; revenues from the sale, exchange, use or cable cast of any programming developed on the System for community or institutional use; provided, however, that this shall not include any taxes on services furnished by the Grantee herein imposed directly upon any Subscriber or User by state, local or other governmental unit and collected by the Grantee on behalf of the governmental unit.
- (n) **Initial Service Area.** All areas in the City having a density of at least forty (40) dwelling units per street mile.
- (o) **Installation.** The connection of the system from feeder cable to subscribers' terminals.
- (p) **Local Advertising Revenues.** Local and regional advertising revenues derived from the sale of locally and regionally inserted advertising, except such advertising sold by or through Grantee's national representative firm.
- (q) **May** Is permissive.
- (r) **Monitoring.** Observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided monitoring shall not include system-wide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or verification of billing for premium or other services.
- (s) **Normal Business Hours.** As applied to the Grantee, shall mean those hours during which similar businesses in the City are open to serve customers. In all cases, Normal Business Hours shall include some evening hours at least one night per week, and/or some weekend hours.
- (t) **Normal Operating Conditions.** Those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
- (u) **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.
- (v) **Shall** Is mandatory.
- (w) **Service Interruption and/or Outages.** The loss of either picture or sound or both for a single or multiple subscriber(s).

- (x) **Street.** The surface of and all rights-of-way and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, terrace, drive or easement now or hereinafter held by the City for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the City which shall, within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.
- (y) **Subscriber.** Any person(s), firm, Grantee, corporation or other legal entity, or association lawfully receiving any service provided by a Grantee pursuant to this Chapter.
- (z) **User.** A party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

Sec. 9-3-3 Rights and Privileges of Grantee.

Any franchise granted by the City pursuant to Section 66.082, Wis. Stats., shall grant to the Grantee the right and privilege to erect, construct, operate and maintain in, upon, and along, across, above, over and under the streets, now in existence and as may be created or established during its terms, any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System.

Sec. 9-3-4 Agreement and Incorporation of Application by Reference.

- (a) Upon adoption of any franchise agreement and execution thereof by the Grantee, the Grantee agrees to be bound by all the terms and conditions contained herein.
- (b) Any Grantee also agrees to provide all services specifically set forth in its application if any and to provide cable television service within the confines of the City; and by its acceptance of the franchise, the Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise.

Sec. 9-3-5 Franchise Territory.

Any franchise is for the legally incorporated territorial limits of the City and for any area henceforth added thereto during the term of the franchise.

Sec. 9-3-6 Duration and Acceptance of Franchise.

The franchise and the rights, privileges and authority granted under this Chapter shall take effect and be in force from and after final City approval thereof, as provided by law, and shall continue in force and effect for a term of no longer than fifteen (15) years, provided that within forty-five

(45) days after the date of final City approval of the franchise the Grantee shall file with the City its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing duly executed. Such franchise shall be non-exclusive and revocable.

Sec. 9-3-7 Franchise Renewal.

- (a) **Current Federal Statutory Process.** Current federal procedures and standards pursuant to 47 U.S.C. 546 shall govern the renewal of any Franchise awarded under this Chapter.
- (b) **Franchise Renewal in the Event of Change in Federal Law.** In the event that any or all of the applicable provisions of federal law are repealed or otherwise modified, the following relevant Subsections shall apply:
 - (1) At least twenty-four (24) months prior to the expiration of the franchise, the Grantee shall inform the City in writing of its intent to seek renewal of the franchise.
 - (2) The Grantee shall submit a proposal for renewal which demonstrates:
 - a. That it has been and continues to be in substantial compliance with the terms, conditions, and limitations of this Chapter and its franchise;
 - b. That its system has been installed, constructed, maintained and operated in accordance with the FCC, and this Chapter and its franchise;
 - c. That it has the legal, technical, and financial qualifications to continue to maintain and operate its system; and
 - d. That it has made a good faith effort to provide services and facilities which accommodate the demonstrated needs of the community, taking into account the cost of meeting such needs.
 - (3) After giving public notice, the City shall proceed to determine whether the Grantee has satisfactorily performed its obligations under the franchise. To determine satisfactory performance, the City shall consider technical developments and performance of the system, cost of services, and any other particular requirements set in this Chapter. The City shall consider the Grantee's reports made to the City and the Federal Communications Commission and the City may require the Grantee to make available specified records, documents, and information for this purpose, and may inquire specifically whether the Grantee will supply services sufficient to meet community needs and interests, taking into account the cost of meeting such needs. Industry performance on a national basis shall also be considered. Provisions shall be made for public comment with adequate prior notice of at least ten (10) days.
 - (4) Grantee shall be entitled to the same due process rights included in Section 626 (47 U.S.C. 546).
 - (5) The City shall then prepare any amendments to this Chapter that it believes necessary.
 - (6) If the City finds the Grantee's performance satisfactory, and finds the Grantee's technical, legal, and financial abilities acceptable, and finds that the Grantee's renewal

proposal meets the future cable-related needs of the City, a new franchise shall be granted pursuant to this Chapter as amended for a period to be determined.

- (7) If the Grantee is determined by the City to have performed unsatisfactorily, new applicants may be sought and evaluated and a franchise award shall be made by the City according to franchising procedures adopted by the City.

Sec. 9-3-8 Police Powers.

- (a) In accepting this franchise, the Grantee shall acknowledge that its rights hereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.
- (b) Any conflict between the provisions of this Chapter and any other current or future lawful exercise of the City's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction, or applies exclusively to the Grantee or cable television systems which contains provisions inconsistent with this franchise, shall prevail only if upon such exercise the City finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

Sec. 9-3-9 Cable Television Franchise Required.

No cable television system shall be allowed to operate or occupy or use the streets, i.e. rights-of-way, for system installation and maintenance purposes without a franchise.

Sec. 9-3-10 Use of Grantee Facilities.

The City shall have the right, during the life of this franchise, to install and maintain upon the poles of the Grantee at a charge equal to Grantee's cost any wire or pole fixtures that do not unreasonably interfere with the cable television system operations, including future plans, of the Grantee. The City shall indemnify and hold harmless the Grantee from any claim that might arise due to or as a result of the City's use.

Sec. 9-3-11 Initial Franchise Costs.

Costs to be borne by the Grantee shall include any requirements or charges incidental to the awarding or enforcing of the initial franchise, but shall not be limited to, all costs of publication

of notices prior to any public meeting provided for pursuant to the franchise, and any costs not covered by application fees, incurred by the City in its study, preparation of proposal documents, evaluation of all applications and examinations of the applicants' qualifications.

Sec. 9-3-12 Notices.

All notices from the Grantee to the City pursuant to this Chapter shall be to the City Clerk's office. The Grantee shall maintain with the City, throughout the term of this franchise, an address for service of notices by mail. The Grantee shall maintain a central office to address any issues relating to operating under this Cable Television Ordinance.

Sec. 9-3-13 Bond.

- (a) Unless a letter of credit or corporate guarantee in lieu of bond pursuant to Section 9-3-46 is on file with the City Clerk, within sixty (60) days after the award of the initial or renewal franchise, the Grantee shall deposit with the City a performance bond, in the amount of Five Thousand Dollars (\$5,000.00). The form and content of the bond shall be approved by the City Attorney. The bond shall be used to insure the faithful performance of the Grantee of all provisions of this Franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the City having jurisdiction over its acts or defaults under this chapter, and the payment by the Grantee of any damages assessed against the Grantee under Section 9-3-46 or any claims, liens, and taxes due the City which arise by reason of the construction, operation or maintenance of the system.
- (b) The bond shall be maintained at the amount established by the City for the entire term of this franchise, even if amounts have to be withdrawn pursuant to Subsection (a) of this Section.
- (c) If the Grantee fails to pay to the City any amounts owed under the Franchise Agreement, that is not on appeal to the court of proper jurisdiction, within the time fixed herein or fails after fifteen (15) days notice to pay to the City any taxes due and unpaid; or fails to repay the City within fifteen (15) days, any damages, costs or expenses which the City is compelled to pay by reason of any act or default of the Grantee in connection with this franchise, or fails, after three (3) days notice of such failure by the City to comply with any provision of this franchise which the City reasonably determines can be remedied by demand on the bond, the City may immediately request payment of the amount thereof, with interest and any penalties, from the bond. Upon such request for payment, the City shall notify the Grantee of the amount and date thereof.
- (d) The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by the franchise or authorized by law, and no action, proceeding or exercise of a right under this Subsection with respect to the bond shall affect any other right the City may have.

- (e) The bond shall contain the an endorsement agreeing that the bond may not be canceled by the surety until thirty (30) days after receipt by the City, by registered mail, of a written notice of such intention to cancel or not renew.
- (f) In the event the City receives a thirty (30) day notice from a surety, it shall have the right to demand payment from the bond unless Grantee provides appropriate assurance that a replacement bond will be presented before the expiration of the thirty (30) day period. Assurance shall be determined by the City at its sole discretion. This Subsection shall not apply if the City and the Grantee agree that a bond in no longer required or if the bond is, by agreement between the City and Grantee, in the process of being reduced.
- (g) The City, at any time during the term of this Chapter, may waive the Grantee's requirement to maintain the bond. The invitation to waive the requirement can be initiated by the City or Grantee.

Sec. 9-3-14 Construction Performance Bond.

- (a) Within sixty (60) days after the award of an initial or renewal franchise, the Grantee shall file with the City a performance bond in the amount of not less than Fifty Thousand Dollars (\$50,000.00) in favor of the City. This bond shall be maintained throughout the construction period and until such time as determined by the City, unless otherwise specified in a Franchise Agreement.
- (b) If the Grantee fails to comply with any law, ordinance or resolution governing the franchise, or fails to observe, fulfill and perform each term and condition of the franchise, as it relates to the conditions relative to the construction of the system, including the Franchise Agreement which is incorporated herein by reference, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, plus a reasonable allowance for attorney's fees, including the City's legal staff, and costs, up to the full amount of the bond. This Subsection shall be an additional remedy for any and all violations outlined in Section 9-3-13.
- (c) The City may, upon completion of construction of the service area, waive the requirement of the Grantee to maintain the bond. However, the City may require a performance bond to be posted by the Grantee for any construction subsequent to the completion of the initial service area, in a reasonable amount and upon such terms as determined by the City.
- (d) The bond shall contain an endorsement stating that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City, by registered mail, a written notice of such intent to cancel and not to renew. Upon receipt of a thirty (30) day notice, and following a thirty (30) day period to cure, this shall be construed as default granting the City the right to demand payment on the bond.

- (e) The City, at any time during the term of this Chapter, may waive Grantee's requirement to maintain a construction bond. The invitation to waive the requirement can be initiated by the City or Grantee.

Sec. 9-3-15 Liability and Insurance.

- (a) The Grantee shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the City and the Grantee in the minimum amount of:
 - (1) One million dollars (\$1,000,000.00) for property damage to any one person;
 - (2) One million dollars (\$1,000,000.00) for property damage in any one accident;
 - (3) One million dollars (\$1,000,000.00) for personal injury to any one person; and
 - (4) One million dollars (\$1,000,000.00) for personal injury in any one accident.
- (b) The certificate of insurance obtained by the Grantee in compliance with this Section shall be filed and maintained with the City during the term of the franchise. The Grantee shall immediately advise the City Attorney of any litigation that may develop that would affect this insurance.
- (c) Neither the provisions of this Section nor any damages recovered by the City thereunder shall be construed to or limit the liability of the Grantee under any franchise issued hereunder or for damages.

Sec. 9-3-16 Indemnification.

- (a) **Disclaimer of Liability.** The City shall not at any time be liable for injury or damage occurring to any Person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of the Grantee's cable television system or due to the act or omission of any Person or entity other than the City or those Persons or legal entities for which the City is legally liable as a matter of law.
- (b) **Indemnification.** The Grantee shall, at its sole cost and expense, indemnify and hold harmless the City, their respective officers, boards, commissions, and employees (hereinafter referred to as "Indemnities") from and against:
 - (1) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnities by reason of any act or omission of the Grantee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any Person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of

- privacy and unauthorized use of any trademark, tradename, copyright, patent, service mark or any other right of any Person, corporation and legal entity, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the system caused by Grantee, its subcontractors or agents or the Grantee's failure to comply with any Federal, State or law.
- (2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), imposed upon indemnities by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the Grantee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the system. Upon written request of the City such claim or lien shall be discharged or bonded within fifteen (15) days following such request.
- (3) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnities by reason of any financing or securities offering by Grantee or its Affiliates for violations of the common law or any laws, statutes, or regulations of the State of Wisconsin or United States, including those of the Federal Securities and Exchange Commission, whether by the Grantee or otherwise; excluding therefrom, however, claims which are solely based upon and shall arise solely out of information supplied by the City to the Grantee in writing and included in the offering materials with the express written approval of the City prior to the offering.
- (c) **Assumption of Risk.** The Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any City-owned or controlled property, including the Public Rights-of-Way, and the Grantee hereby agrees to indemnify and hold harmless the Indemnities against and from any claim asserted or liability imposed upon the Indemnities for personal injury or property damage to any Person arising out of the installation, operation, maintenance or condition of the system or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation. The City shall hold harmless for any damages resulting from the negligence or misconduct of the Grantor or its officials, boards, departments, commissions or employees.
- (d) **Defense of Indemnities.** In the event any action or proceeding shall be brought against any or all of the Indemnities by reason of any matter for which the Indemnities are indemnified hereunder, the Grantee shall, upon notice from any of the Indemnities, at the Grantee's sole cost and expense, defend the same; provided further, however, that the Grantee shall not admit liability in any such matter on behalf of the Indemnities without the written consent of the City Attorney or his/her designee.

- (e) **Notice Cooperation and Expenses.** The City shall give the Grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the City from cooperating with Grantee and participating in the defense of any litigation by the City's own counsel at the City's own expense. No recovery by the City of any sum under the Security shall be any limitation upon the liability of the Grantee to the City under the terms of this Section, except that any sum so received by the City shall be deducted from any recovery which the City might have against the Grantee under the terms of this Section.
- (f) **Nonwaiver of Statutory Limits.** Nothing in this agreement is intended to express or imply a waiver of the statutory provisions, of any kind or nature, as set forth in Section 893.80 et. seq., Wis. Stats., including the limits of liability of the City.

Sec. 9-3-17 Rights of Individuals.

- (a) The Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, income or sex. The Grantee shall comply at all times with all other applicable federal, state and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Chapter by reference.
- (b) The Grantee shall strictly adhere to the equal employment opportunity requirements of the Federal Communications Commission, state and local regulations, as amended from time to time.
- (c) The Grantee shall, at all times, comply with the privacy requirements of State and federal law.
- (d) Grantee is required to make all services available to all residential dwellings throughout the service area located in areas having a density of at least forty (40) dwelling units per street mile.

Sec. 9-3-18 Public Notice.

Minimum public notice of any public meeting relating to this Chapter shall be governed by the provisions of the State Open Meeting Law, and shall be on at least one (1) channel of the Grantee's system between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days prior to the meeting.

Sec. 9-3-19 Service Availability and Records Request.

The Grantee shall provide cable television service throughout the entire franchise area pursuant to the provisions of this franchise and shall keep a record for at least three (3) years of all written

requests for service received by the Grantee. This record shall be available for public inspection at the local office of the Grantee during regular office hours.

Sec. 9-3-20 System Construction.

(a) New Construction Timetable.

- (1) Within two (2) years from the date of the award of the initial franchise, the Grantee must make cable television service available to every dwelling unit within the initial service area:
 - a. The Grantee must make cable television service available to at least twenty percent (20%) of the dwelling units within the initial service area within six (6) months from the date of the award of the franchise.
 - b. The Grantee must make cable television service available to at least fifty percent (50%) of the dwelling units within the initial service area within one (1) year from the date of the award of the franchise.
- (2) The Grantee, in its application if any, may propose a timetable of construction which will make cable television service available in the initial service area sooner than the above minimum requirements, in which case the said schedule will be made part of the franchise agreement, and will be binding upon the Grantee.
- (3) Any delay beyond the terms of this timetable, unless specifically approved by the City, will be considered a violation of this Chapter for which the provisions of Sections 9-3-37 or 9-3-46 shall apply, as determined by the City.
- (4) In special circumstances, the City can waive one hundred percent (100%) completion within the two (2) year timeframe provided substantial completion is accomplished within the allotted timeframe, substantial completion construed to be not less than ninety-five percent (95%) and justification for less than one hundred percent (100%) must be submitted subject to the satisfaction of the City.

(b) Line Extensions.

- (1) **Extensions.** In areas of the franchise territory not included in the initial service areas, the Grantee shall be required to extend its system pursuant to the following requirements:
 - a. No customer shall be refused service arbitrarily. The Grantee is hereby authorized to extend the cable system as necessary within the City. 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, the Grantee shall commence the design and construction process upon receipt of the final engineering plan. Upon notification from the City that the first home in the project has been approved for building permit, the Grantee shall have a maximum of three (3) months to complete the construction/activation process within the project phase.

- b. The Grantee must extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least forty (40) dwelling units planned per street mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.
 - c. The Grantee must extend and make cable television service available to any isolated resident outside the initial service area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred fifty (150) foot drop line.
- (2) **Early Extension.** In areas not meeting the requirements for mandatory extension of service, the Grantee shall provide, upon the request of a potential subscriber desiring service, an estimate of the costs required to extend service to the subscriber. The Grantee shall then extend service to the potential subscriber. The Grantee may require advance payment or assurance of payment satisfactory to the Grantee. In the event the area subsequently reaches the density required for mandatory extension within two (2) years, such payments shall be refunded to the Subscriber upon request.
- (3) **New Developments.** In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Grantee reasonable notice of such construction or development, and of the particular date on which open 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 also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if the Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by the Grantee. Except for the notice of the particular date on which trenching will be available to the Grantee, any notice provided to the Grantee by the City of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the Grantee prior to approval of the preliminary plat request.
- (c) **Special Agreements.**
- (1) Nothing herein 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 percent (5%) of those gross revenues are paid to the City as franchise fees under Section 9-3-27.
 - (2) The Grantee may propose a line extension policy which will result in serving more residents of the City than as required above, in which case the Grantee's policy will be incorporated into the franchise agreement, and will be binding on the Grantee.
- (d) **Violations.** The violation of this Section, following a thirty (30) day period to cure, shall be considered a breach of the terms of this Chapter for which the provisions of either Sections 9-3-38 and 9-3-46 shall apply, as determined by the City.

Sec. 9-3-21 Construction and Technical Standards.

- (a) **Compliance With Construction and Technical Standards.** The Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards. In addition, the Grantee shall provide the City, upon request, with a written report of the results of the Grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.
- (b) **Additional Specifications.**
- (1) Construction, installation and maintenance of the cable television system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
 - (2) The Grantee shall at all times comply with:
 - a. National Electrical Safety Code (National Bureau of Standards);
 - b. National Electrical Code (National Bureau of Fire Underwriters); and
 - c. Applicable FCC or other federal, state and local regulations.
 - (3) In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the Grantee may have equipment located.
 - (4) Any antenna structure used in the system shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.
 - (5) All working facilities and conditions used during construction, installation and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration (OSHA).
 - (6) Radio Frequency (RF) leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.
 - (7) The Grantee shall maintain equipment capable of providing standby power for headend and transport system for a minimum of two (2) hours.
 - (8) In all areas of the City where the cables, wires, and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground. When public utilities relocate their facilities from pole to underground, the Grantee must concurrently do so.

Sec. 9-3-22 Use of Streets.

- (a) **Interference With Persons and Improvements.** The Grantee's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall

endanger or interfere with the lives of persons or interfere with the rights or reasonable health, safety and welfare of property owners who adjoin any of the streets and public ways, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements, or public property.

- (b) **Restoration to Prior Condition.** In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing by the Grantee, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in as good condition as before the work was commenced and in accordance with standards for such work set by the City. After thirty (30) days, if restoration measures are not performed to the reasonable satisfaction of the City, the City may undertake remedial restoration activities, such activities to be performed at the Grantee's cost.
- (c) **Erection, Removal and Common Uses of Poles.**
 - (1) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the City with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles and structures shall be removed or modified by the Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby.
 - (2) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the Grantee, but it does not make arrangements for such use, the City may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
 - (3) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the Grantee, but it does not make arrangements for such use, the City may require the Grantee to permit such use for reasonable consideration and terms.
- (d) **Relocation of the Facilities.** If at any time during the period of this franchise the City shall lawfully elect to alter or change the grade of any street, alley or other public ways, the Grantee, upon reasonable notice by the City, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- (e) **Cooperation With Building Movers.** The Grantee shall, on the request of any person holding a building-moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of 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 at least ten (10) days advance notice to arrange for such temporary wire changes.
- (f) **Tree Trimming.** The Grantee shall not remove any tree or trim any portion of any tree within any public street as defined herein without the prior consent of the City, except in

an emergency situation. The Grantee shall provide notice to any affected residents at the same time that the Grantee applies to the City for consent to perform tree trimming. The City shall have the right to do the trimming requested by the Grantee at the cost of the Grantee. Regardless of who performs the work requested by the Grantee, the Grantee shall be responsible, shall defend and hold the City harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

- (g) **Road Cuts.** The Grantee shall not use road cuts for the laying of cable or wires without the prior approval of the City. In the absence of such approval, the Grantee shall utilize auguring.

Sec. 9-3-23 Operational Standards.

- (a) The Grantee shall maintain all parts of the system in good condition throughout the entire franchise period.
- (b) Upon the reasonable request for service by any person located within the initial service area, the Grantee shall, within thirty (30) days furnish the requested service to such person within the terms of the extension policy. A request for service shall be unreasonable for the purpose of this Subsection if no distribution line installation capable of servicing that person's block has as yet been installed.
- (c) Temporary service drops shall comply with the following:
- (1) The Grantee shall put forth every effort to bury temporary drops within twenty-five (25) days after placement. Any delays for any other reason than listed will be communicated to the City. The following delays will be found understandable and within the course of doing business: weather, ground conditions, street bores, system redesign requirements and any other unusual obstacle, such as obstructive landscaping that is created by the customer.
 - (2) The Grantee shall provide reports to the City, upon request, on the number of drops pending.
- (d) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.
- (e) The Grantee shall not allow its cable or other operations to interfere with television reception of Subscribers or persons not served by the Grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the customers within the confines of the City, nor shall other utilities interfere with the Grantee's system.

Sec. 9-3-24 Customer Service Standards.

- (a) Nothing in this Chapter shall be construed to prohibit the enforcement of any federal, state or local law or regulation concerning customer service or consumer protection that imposes customer service standards or consumer protection requirements that exceed the customer service standards set out in this Chapter or that address matters not addressed in this Chapter.
- (b) The Grantee shall maintain a local or toll-free telephone access line which is available to its Subscribers and shall have knowledgeable, qualified representatives available to respond to customer telephone inquiries regarding repairs twenty-four (24) hours per day, seven (7) days per week.
- (c) Under normal operating conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed thirty (30) seconds. This standard shall be met no less than ninety (90%) of the time as measured on an annual basis.
- (d) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the total time that the office is open for business.
- (e) A centrally-located customer service center will be open for walk-in customer transactions a minimum of eight (8) hours per day Monday through Friday, unless there is a need to modify those hours because of the location or customers served. The Grantee and City by mutual consent shall establish supplemental hours on weekdays and weekends as fits the needs of the community.
- (f) Under normal operating conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time as measured on an annual basis:
 - (1) Standard installations will be performed within seven (7) business days after an order has been placed. A standard installation is one that is within one hundred fifty (150) feet of the existing system.
 - (2) Excluding those situations that are beyond its control, the Grantee will respond to any service interruption promptly and in no event later than twenty-four (24) hours from the time of initial notification. All other regular service requests will be responded to within thirty-six (36) hours during the normal work week for that system. The appointment window alternatives for installations, service calls and other installation activities will be: "morning" or "afternoon"; not to exceed a four (4) hour "window" during Normal Business Hours for the system, or at a time that is mutually acceptable. The Grantee shall schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.
- (g) Upon Service Interruption and/or Outages of subscriber's cable service, the following shall apply:
 - (1) For Service Interruptions of over four (4) hours and up to seven (7) days, the Grantee shall provide, at the Subscriber's written request, a credit of one-thirtieth (1/30) of one

- month's fees for affected services for each twenty-four (24) hour period service is interrupted for four (4) or more hours for any single subscriber, with the exception of subscribers disconnected because of non-payment or excessive signal leakage.
- (2) For Service Interruptions of seven (7) days or more in one month, the Grantee shall provide, at the Subscriber's written request, a full month's credit for affected services for all affected Subscribers.
- (h) The Grantee will provide written information in each of the following areas at the time of installation and at any future time upon the request of a Subscriber:
- (1) Product and services offered.
 - (2) Prices and service options.
 - (3) Installation and service policies.
 - (4) How to use the cable services.
- (i) Bills will be clear, concise and understandable, with all cable services itemized.
- (j) Credits will be issued promptly, but no later than the customer's next billing cycle following the resolution of the request and the return of the equipment by the Grantee if service has been terminated.
- (k) The Grantee shall notify customers a minimum of thirty (30) days in advance of any rate or channel change.
- (l) The Grantee shall maintain and operate its network in accordance with the rules and regulations as are incorporated herein or may be promulgated by the Federal Communications Commission, the United States Congress, or the State of Wisconsin.
- (m) The Grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this Chapter. Should the City find, by resolution, that the Grantee has failed to maintain these technical standards and quality of service, Grantee shall be required to implement a plan for resolution. Failure to make such improvements within three (3) months of such resolution will constitute a breach of a condition for which penalties contained in Sec. 9-3-46 are applicable.
- (n) The Grantee shall keep a monthly service log which will indicate the nature of each service complaint received in the last twenty-four (24) months, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be made available for periodic inspection by the City.

Sec. 9-3-25 Continuity of Service Mandatory.

- (a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. If the Grantee elects to over build, rebuild, modify or sell the system, or the City gives notice of intent to terminate or fails to renew this franchise, the Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances.

- (b) If there is a change of franchise, or if a new operator acquires the system, the Grantee shall cooperate with the City, new franchisee or operator in maintaining continuity of service to all Subscribers.
- (c) If the Grantee fails to operate the system for seven (7) consecutive days without prior approval of the City or without just cause, the City may, at its option, operate the system or designate an operator until such time as the Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the City for all reasonable costs and damages in excess of revenues from the system received by the City that are the result of the Grantee's failure to perform.

Sec. 9-3-26 Complaint Procedure.

- (a) The Common Council or its designee has primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.
- (b) During the terms of the franchise, and any renewal thereof, the Grantee shall maintain a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local and/or toll-free telephone call to receive complaints regarding quality of service, equipmental functions and similar matters. The Grantee will use its good faith efforts to arrange for one or more payment locations in a central location where Subscribers can pay bills or conduct other business activities.
- (c) As Subscribers are connected or reconnected to the system, the Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for 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.
- (d) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the City, casts doubt on the reliability or quality of cable service, the City shall have the right and authority to require the Grantee to test, analyze and report on the performance of the system. The Grantee shall fully cooperate with the City in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:
 - (1) The nature of the complaint or problem which precipitated the special tests;
 - (2) What system component(s) was tested;
 - (3) The equipment used and procedures employed in testing;
 - (4) The method, if any, in which such complaint or problem was resolved;
 - (5) Any other information pertinent to the tests and analysis which may be required.
- (e) The City may require that tests be supervised, at the Grantee's expense unless results are found to be in compliance, by an independent professional engineer or equivalent of the

City's choice. The engineer should sign all records of special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken.

- (f) The City's right under this Section shall be limited to requiring tests, analysis and reports covering specific subjects and characteristics based on 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 cable service.

Sec. 9-3-27 Grantee Rules and Regulations.

The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

Sec. 9-3-28 Franchise Fee.

- (a) A Grantee shall pay to the City a franchise fee in the amount designated in the Franchise Agreement. Unless otherwise specified in the Franchise Agreement, such franchise fee shall be five percent (5%) of the Grantee's Gross Revenues.
- (b) The franchise fee payment shall be in addition to any other tax or 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.
- (c) The franchise fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the City within forty-five (45) days after the end of each calendar quarter. The Grantee shall file a complete and accurate verified statement of Gross Revenues as previously defined within forty-five (45) days of the end of each quarter.
- (d) The City shall have the right to inspect the Grantee's income records and to audit and to recompute any amounts determined to be payable under this Chapter; provided, however, that any such audit shall take place within sixty (60) months following the close of a particular calendar year. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City which notice shall include a copy of the audit report.
- (e) If any franchise fee payment or recompute amount, cost or penalty is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at an

annual rate of twelve percent (12%). The Grantee shall reimburse the City for any additional expenses and costs incurred by the City by reason of the delinquent payment(s), including, but not limited to, attorney's fees, consultant fees and audit fees.

Sec. 9-3-29 Transfer of Ownership or Control.

- (a) A franchise shall not be assigned or transferred, either in whole or in part, or leased or sublet in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person without the prior written consent of the City. The Grantee may, however, transfer or assign the franchise to a wholly-owned subsidiary of the Grantee and such subsidiary may transfer or assign the franchise back to the Grantee without such consent, providing that such assignment is without any release of liability of the Grantee. Any proposed assignee must show legal, technical and financial responsibility as determined by the City and must agree to comply with all provisions of the Franchise. The City shall have one hundred and twenty (120) days to act upon any request for approval of such sale or transfer submitted in writing that contains or is accompanied by such information as is required in accordance with FCC regulations and by the City. The City shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to the Grantee within one hundred and twenty (120) days following receipt of written notice and the necessary information as to the effect of the proposed transfer or assignment upon the public unless the requesting party and the City agree to an extension of time. The City shall not unreasonably withhold such consent to the proposed transfer.
- (b) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, Control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of forty percent (40%) of the voting shares of the Grantee. Every change, transfer or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the City shall have consented thereto, which consent will 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 qualification of the prospective controlling party, and the Grantee shall assist the City in such inquiry.
- (c) The consent or approval of the City to any transfer of 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 subordinate to the terms and conditions of this franchise.
- (d) In the absence of extraordinary circumstances, the City will not approve any transfer or assignment of an initial franchise prior to substantial completion of construction of the proposed system.

- (e) In no event shall a transfer of ownership or control or an assignment of the Franchise be approved without the successor in interest or the assignee becoming a signatory to the Franchise Agreement.

Sec. 9-3-30 Availability of Books and Records.

- (a) The Grantee shall fully cooperate in making available at reasonable times, and the City shall have the right to inspect at the Grantee's office, upon reasonable notice and where reasonably necessary to the enforcement of the franchise, books, records, maps, plans, and other like materials of the Grantee applicable to the cable television system, at any time during normal business hours.
- (b) Unless prohibited by law, rule or regulation, the following records and/or reports are to be made available to the City upon request, but no more frequently than once on an annual basis unless mutually agreed upon by the Grantee and the City:
- (1) A yearly review and resolution or progress report submitted by the Grantee to the City;
 - (2) Periodic preventive maintenance reports;
 - (3) Any copies of FCC Form 395-A (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;
 - (4) Subscriber inquiry/complaint resolution data and the right to review documentation concerning these inquiries and/or complaints periodically;
 - (5) Periodic construction update reports, including where appropriate the submission of as-built maps.

Sec. 9-3-31 Other Petitions and Applications.

Copies of all petitions, applications, communications and reports either submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the system authorized pursuant to the franchise or received from such agencies shall be provided to the City upon request.

Sec. 9-3-32 Fiscal Reports.

The Grantee shall file annually with the City no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a Gross Revenues statement certified by an officer of the Grantee.

Sec. 9-3-33 Removal of Cable Television System.

At the expiration of the terms for which a franchise is granted and any renewal denied, or upon its termination as provided herein, the Grantee shall forthwith, upon notice by the City, remove at its own expense all designated portions of the cable television system from all streets and public property within the City within six (6) months. If the Grantee fails to do so within six (6) months, the City may perform the work at the Grantee's expense. Upon such notice of removal, a bond shall be furnished by the Grantee in an amount sufficient to cover this expense.

Sec. 9-3-34 Required Services and Facilities.

- (a) **Channel Capacity.** The cable television system shall have a minimum channel capacity of seventy-seven (77)..
- (b) **Two-Way Capability.** Such system shall maintain a plant having the technical capacity for "two-way" communications.
- (c) **Public Access Channels.** The Grantee shall maintain the following:
 - (1) At least one (1) specially-designated channel for use by local educational authorities;
 - (2) At least one (1) specially-designated channel for local governmental uses;
 - (3) Provided, however, these uses may be combined on one or more channels until such time as additional channels become necessary in the opinion of the City. Financial and technical support, replacement and maintenance of equipment of this facility shall be separately incorporated into a Franchise Agreement; and
 - (4) If required by the Franchise Agreement, an Institutional Network (I-Net) of cable, optical, electrical or electronic equipment, used for the purpose of transmitting two-way telecommunications signals interconnecting designated entities as set forth in the Franchise Agreement and mutually agreed to by the Grantee and the Grantor. Such Institutional Network may be provided as needed by utilizing capacity on the system.
- (d) **Emergency Use.** The Grantee shall incorporate into the system the capacity which will permit the City, in times of local emergency, to override by remote control, the audio of all channels simultaneously which the Grantee may lawfully override or to place a crawl on all such channels. The Grantee shall provide emergency broadcast capacity pursuant to FCC rules. The Grantee shall cooperate with the City in the use and operation of the emergency alert override system.

Sec. 9-3-35 Rules and Regulations.

- (a) In addition to the inherent powers of the City to regulate and control a cable television franchise, and those powers expressly reserved by the City, or agreed to and provided for

herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of this Chapter; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations, and do not appreciably increase the burdens or appreciably impair the rights of the Grantee under the Franchise Agreement.

- (b) The City may also adopt such regulations at the request of the Grantee upon application.

Sec. 9-3-36 Performance Evaluation Sessions.

- (a) The City and the Grantee may hold scheduled performance evaluation sessions within thirty (30) days of the third and sixth anniversary dates of the Grantee's award or renewal of the franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.
- (b) Special evaluation sessions may be held at any time during the term of the franchise at the request of the City or the Grantee.
- (c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with their legal notice. The Grantee shall notify its Subscribers of all evaluation sessions by announcements on at least one (1) channel of its system between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days preceding each session.
- (d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fees, penalties, free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints, privacy; amendments to this Chapter; judicial and FCC rulings; line extension policies; and Grantee or City rules. The City acknowledges that, pursuant to federal law, it does not have jurisdiction nor enforcement rights over all the standards and services mentioned above, including programming and the application of all new technologies under a cable television franchise. Nothing in this Subsection shall be construed as requiring the renegotiation of the cable franchise agreement.
- (e) Members of the general public may add topics either by working through the City or Grantee or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the City, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

Sec. 9-3-37 Rate Change Procedures.

Pursuant to the Cable Television Consumer Protection and Competition Act of 1992, the City is currently certified to regulate the Basic Service rates charged by Grantee. Under these rules,

Grantee is required to obtain approval from the City for a rate increase for any change to the rates for Basic Service. Should Federal and State law permit further rate regulation beyond the Basic Service, the City shall assume such rate regulation and adopt appropriate procedures for such regulation.

Sec. 9-3-38 Forfeiture and Termination.

- (a) Pursuant to Sec. 9-3-47, in addition to all other rights and powers retained by the City under this Chapter or otherwise, the City reserves the right to forfeit and terminate the franchise and all rights and privileges of the Grantee thereunder in the event of a substantial breach of its terms and conditions. A substantial breach by the Grantee shall include, but not be limited to, the following:
 - (1) Violation of any material provision of this Chapter or the franchise or any material rule, order, regulation or determination of the City made pursuant to the franchise;
 - (2) Attempt to evade any material provision of this Chapter or the franchise or practice any fraud or deceit upon the City or its Subscribers;
 - (3) Failure to begin or complete system construction or system extension as provided under Sec. 9-3-20;
 - (4) Failure to provide the services promised in the Grantee's application, if any, as incorporated herein by Sec. 9-3-4;
 - (5) Failure to restore service after one hundred sixty-eight (168) consecutive hours of interrupted service, except when approval of such interruption is obtained from the City; or
 - (6) Material misrepresentation of fact in the application for or negotiation of the franchise.
- (b) The foregoing shall not constitute a substantial breach if the violation occurs but is without fault of the Grantee or occurs as a result of circumstances beyond its control. The Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.
- (c) The City may make a written demand that the Grantee comply with any such provision, rule, order or determination under or pursuant to the franchise. If the violation by the Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may place the issue of termination of the franchise before the Common Council. The City shall cause to be served upon the Grantee, at least twenty (20) days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the Council is to consider.
- (d) The Common Council shall hear and consider the issue(s) and shall hear any person interested therein and shall determine in its discretion whether or not any violation by the Grantee has occurred.

- (e) If the Common Council shall determine the violation by the Grantee was the fault of the Grantee and within its control, the Council may, by resolution, declare that the franchise of the Grantee shall be forfeited and terminated unless there is compliance within such period as the Council may fix, such period shall not be less than thirty (30) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.
- (f) The issue of forfeiture and termination shall automatically be placed upon the Council agenda at the expiration of the time set by it for compliance. The Council then may terminate the franchise forthwith upon finding that the Grantee has failed to achieve compliance or may further extend the period, in its discretion.

Sec. 9-3-39 Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the Grantee shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Chapter governing the consent of the City to such change in control of the Grantee shall apply.

Sec. 9-3-40 Approval of Transfer; Right of Acquisition By The City.

Federal regulations as per 47 U.S.C. 537 shall apply o approval of transfer issues and the right of acquisition by the City.

Sec. 9-3-41 Receivership.

The City shall have the right to cancel the franchise one hundred twenty (120) days after the appointment of a receiver or trustee, to take over and conduct the business of the Grantee, unless such receivership or trusteeship shall have been vacated prior to the expiration of one hundred twenty (120) days, or unless:

- (a) Within one hundred twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Chapter and remedied all defaults thereunder; and
- (b) Such receiver or trustee, within one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Chapter and the franchise granted to the Grantee.

Sec. 9-3-42 Compliance with State and Federal Laws.

- (a) Notwithstanding any other provisions of this Chapter to the contrary, the Grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof; provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of this franchise or of any law or regulation of the City, then as soon as possible following knowledge thereof, the Grantee shall notify the City of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City or this franchise.
- (b) If the City determines that a material provision of this Chapter is affected by any subsequent action of the state or federal government, the City and the Grantee shall negotiate to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement.
- (c) If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise, or any renewal or renewals thereof.

Sec. 9-3-43 Landlord/Tenant.

- (a) **Interference With Cable Service Prohibited.** Neither the owner of any multiple unit residential dwelling nor his/her agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation or maintenance from a Grantee regulated by and lawfully operating under a valid and existing franchise issued by the City.
- (b) **Penalties and Charges to Tenants for Service Prohibited.** Neither the owner or any multiple unit residential dwelling nor his/her agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a Grantee operating under a valid and existing franchise issued by the City.
- (c) **Reselling Service Prohibited.** No person shall resell, without the expressed, written consent of both the Grantee and the City, any cable service, program or signal transmitted by a Grantee under a franchise issued by the City.
- (d) **Protection of Property Prohibited.** Nothing in this Chapter shall prohibit a person from requiring that cable communication system facilities conform to laws and regulations and

reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

Sec. 9-3-44 Applicants' Bids For Initial Franchise.

- (a) All bids received by the City from the applicants for an initial franchise will become the sole property of the City.
- (b) The City reserves the right to reject any and all bids and waive informalities and/or technicalities where the best interest of the City may be served.
- (c) All questions regarding the meaning or intent of this Chapter or application documents shall be submitted to the City in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the City as having received the application documents. The City reserves the right to make extensions of time for receiving bids as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of bids will not be answered. Only replies to questions by written addenda will be binding. All bids must contain an acknowledgment of receipt of all addenda.
- (d) Bids must be sealed, and submitted at the time and place indicated in the application documents for the public opening. Bids may be modified at any time prior to the opening of bids, provided that any modifications must be duly executed in the manner that the applicant's bid must be executed. No bid shall be opened or inspected before the public opening.
- (e) Before submitting a bid, each applicant must:
 - (1) Examine this Chapter and the application documents thoroughly;
 - (2) Familiarize himself/herself with local conditions that may in any manner affect performance under the franchise;
 - (3) Familiarize himself/herself with federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise; and
 - (4) Carefully correlate the bid with the requirements of this Chapter and the application documents.
- (f) The City may make such investigations as it deems necessary to determine the ability of the applicant to perform under the franchise, and the applicant shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any bid if the evidence submitted by, or investigation of, such applicant fails to satisfy the City that such applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional bids will not be accepted.
- (g) All bids received shall be placed in a secure depository approved by the City and not opened nor inspected prior to the public opening.

Sec. 9-3-45 Financial, Contractual, Shareholder and System Disclosure For Initial Franchises.

- (a) No initial franchise will be granted to any applicant unless all requirements and demands of the City regarding financial, contractual, shareholder and system disclosure have been met.
- (b) Applicants, including all shareholders and parties with any interest in the applicant, shall fully disclose all agreements and undertakings, whether written or oral, or implied with any person, firm, group, association or corporation with respect to a franchise and the proposed cable television system. The Grantee shall disclose all other contracts to the City as the contracts are made. This Section shall include, but not be limited to, any agreements between local applicants and national companies.
- (c) Applicants, including all shareholders and parties with any interest in the applicant, shall submit all requested information as provided by the terms of this Chapter or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the applicant.
- (d) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose the numbers of shares of stock, and shall include the amount of consideration for each share of stock and the nature of the consideration.
- (e) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding other cable systems in which they hold an interest of any nature, including, but not limited to, the following:
 - (1) Locations of all other franchises and the dates of award for each location;
 - (2) Estimated construction costs and estimated completion dates for each system;
 - (3) Estimated number of miles of construction and number of miles completed in each system as of the date of this application; and
 - (4) Date for completion of construction as promised in the application for each system.
- (f) Applicants, including all shareholders and parties with any interest in the applicant, shall disclose any information required by the application documents regarding pending applications for other cable systems, including, but not limited to, the following:
 - (1) Location of other franchise applications and date of application for each system;
 - (2) Estimated dates of franchise awards;
 - (3) Estimated number of miles of construction; and
 - (4) Estimated construction costs.

Sec. 9-3-46 Penalties.

For the violation of any of the following provisions of this franchise, damages shall be chargeable to the Security as specified in Sec. 9-3-13, and the City may determine the amount of the fine

for other violations which are not specified in a sum not to exceed Two Hundred and Fifty Dollars (\$250.00) for each violation, with each day constituting a separate violation:

- (a) Failure to furnish, maintain, or offer all cable services to any potential Subscriber within the City pursuant to Sec. 9-3-20 upon order of the City: Two Hundred and Fifty Dollars (\$250.00) per day, per violation, for each day that such failure occurs or continues up to a maximum of One Thousand Dollars (\$1,000.00);
- (b) Failure to obtain or file evidence of required insurance, construction bond, or performance bond, or other required financial security: Two Hundred and Fifty Dollars (\$250.00) per day, per violation, for each day such failure occurs or continues up to a maximum of One Thousand Dollars (\$1,000.00);
- (c) Failure to provide access to data, documents, records, or reports to the City as required by Sections 9-3-19, 9-3-29, 9-3-30, 9-3-31 and 9-3-37: Two Hundred and Fifty Dollars (\$250.00) per day, per violation, for each day such failure occurs or continues up to a maximum of One Thousand Dollars (\$1,000.00);
- (d) Failure to comply with applicable construction, operation, or maintenance standards: Two Hundred and Fifty Dollars (\$250.00) per day, per violation up to a maximum of One Thousand Dollars (\$1,000.00);
- (e) Failure to comply with a rate decision or refund order: Five Hundred Dollars (\$500.00) per day, per violation, for each day such a violation occurs or continues up to a maximum of One Thousand Dollars (\$1,000.00).
- (f) Any violations for non-compliance with the customer service standards of Sections 9-3-23 through 9-3-25: Two Hundred and Fifty Dollars (\$250.00) per day for each day, or part thereof, that such noncompliance continues up to a maximum of One Thousand Dollars (\$1,000.00).
- (g) Any other violations of the franchise agreement to be determined by the City in a public hearing but not specifically noted in this Section shall not exceed Two Hundred and Fifty Dollars (\$250.00) per day, per violation, up to a maximum of One Thousand Dollars (\$1,000.00).

Sec. 9-3-47 Procedures.

- (a) Whenever the City believes that the Grantee has violated one (1) or more terms, conditions, or provisions of this Chapter or the franchise, and wishes to impose penalties, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Grantee an opportunity to remedy the violation. The Grantee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the City may impose penalties unless the violation is of such nature so as to require more than thirty (30) days and the Grantee proceeds diligently within the thirty (30) days to correct the violation,

or as promptly as possible thereafter to correct the violation. In any case where the violation is not cured within thirty (30) days of notice from the City, or such other time as the Grantee and the City may mutually agree to, the City may proceed to impose liquidated damages.

- (b) The Grantee may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the City shall specify with particularity the matters disputed by the Grantee and shall stay the running of the thirty (30) day cure period pending the City's decision as required below. The City shall hear the Grantee's dispute. Grantee must be given at least five (5) days written notice of the hearing. At the hearing, the Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. After the hearing, the City shall provide Grantee a copy of its action, along with supporting documents. In the event the City upholds the finding of a violation, the Grantee shall have fifteen (15) days subsequent, or such other time period as the Grantee and the City mutually agree upon, to such determination to correct the alleged violation before penalties may be imposed.
- (c) The rights reserved to the City under this Section are in addition to all other rights of the City whether reserved by this franchise or authorized by law or equity, and no action, proceeding or exercise of a right with respect to penalties shall affect any other right the City may have.
- (d) The City shall stay or waive the imposition of any penalty set forth above upon a finding that any failure or delay is a result of acts of nature or due to circumstances beyond the reasonable control of the Grantee.

Sec. 9-3-48 Force Majeure.

The Grantee shall not be in default under, or in noncompliance with, the provisions of the franchise, nor suffer any enforcement or penalty relating to noncompliance or default including termination, cancellation or revocation of the franchise, where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, severe weather conditions or other catastrophic act of nature, labor disputes, inability to obtain necessary contract labor or materials, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate and control and that makes performance impossible.

CHAPTER 4

Natural Gas

9-4-1 Grant of Franchise

SEC. 9-4-1 GRANT OF FRANCHISE.

- (a) The City of Washburn hereby grants unto the Lake Superior District Power Company, a Wisconsin corporation, its successors and assigns, an exclusive franchise to construct and maintain facilities within said City for the distribution and sale of natural gas to customers within said City; and for such purpose said company is authorized to enter upon and use and occupy the streets, alleys, bridges, avenues and public grounds and places of the said City to construct, lay, maintain, operate and extend thereon, through and thereunder, such mains, pipes, apparatus, equipment and appliances as may be necessary or appropriate for the sale, distribution and delivery of natural gas to consumers within the said City, subject, however, to the conditions hereinafter set forth.
- (b) For the purpose of carrying into effect the franchises and privileges granted by Subsection (a) hereof, Lake Superior District Power Company, its successors and assigns, is hereby authorized to make all necessary excavations in streets, alleys, avenues and public grounds and places, which shall be done with reasonable dispatch and with the least possible interference with, or inconvenience to, the rights of the public. Lake Superior District Power Company shall restore all streets, alleys, avenues and public grounds and places when excavated by it to their original condition of safety and utility. If Lake Superior District Power Company shall use any bridges or viaducts on which to lay mains or other facilities, it shall lay or place such mains or other facilities over, under or upon such bridge or viaducts with the least practicable interference with, or inconvenience to, the rights of the public.
- (c) Except in emergencies, Lake Superior District Power Company shall give the official or committee designated by the City twenty-four (24) hours' notice of its intention to excavate in any street, alley, avenue or public ground or place; and such excavation shall be made on the side or portion of the street, alley, avenue or public ground or place as may be directed by such official or committee.
- (d) Prior to commencing the construction of its natural gas distribution system and facilities in this City, Lake Superior District Power Company shall procure any authority from the Public Service Commission of Wisconsin, and any other regulatory body having jurisdiction, required to authorize construction of said facilities and to supply natural gas to customers within the said City.
- (e) If Lake Superior District Power Company does not commence the construction of its natural gas distribution system and facilities required to introduce natural gas into the City of Washburn within twelve (12) months of the date when natural gas is delivered by a pipeline to a City gate delivery point near the City limits of said City for sale and distribution within the City, then the said City of Washburn shall have the option to terminate and cancel this franchise by giving Lake Superior District Power Company, its successors or assigns, at least ninety (90) days' written notice of its election to do so, such notice to Lake Superior District Power Company to be sent to 101 West Second Street, Ashland, Wisconsin.

- (f) The franchise granted in this Chapter is subject to all lawful rules and regulations of the Common Council of said City and to all provisions of statutory law applicable thereto, and to all legal orders, rules and regulations of the Public Service Commission of Wisconsin and of any other state agency having authority under law, from time to time, over any phase of the operations of Lake Superior District Power Company under or pursuant to the franchise granted in this Chapter.

Chapter 5

Laterals; Connections

- 9-5-1** Relocated and Abandoned Mains
- 9-5-2** Failing Laterals
- 9-5-3** Property Owner Shall Pay Cost of Change
- 9-5-4** Multiple Laterals
- 9-5-5** Lateral Trespass
- 9-5-6** Abandonment and Termination of Use of Laterals
- 9-5-7** When Connection Required
- 9-5-8** Financing Option Available
- 9-5-9** Special Assessment for Financing of Water and Wastewater Laterals

Sec. 9-5-1 Relocated and Abandoned Mains.

- (a) **New Connection Required.** In those instances when the City relocates or abandons a water, sanitary sewer or storm sewer main to which customer laterals are connected:
 - (1) The City shall issue an order, via certified mail, to the affected user, and the property owner of record if different than the affected user, providing a deadline of one hundred eighty (180) days for connection to the new, relocated, or replacement main.
 - (2) The notice shall include the reason for the connection order and the consequences for not undertaking the required connection in the specified time frame.
 - (3) The one hundred eighty (180) day time frame may be shortened for emergency situations requiring a new lateral connection within a shorter time frame.
 - (4) Except in the case of emergency circumstances, no utility user shall be required to undertake a new connection to the City's utilities between November 1st and April 15th.
- (b) **Permits Required.** The affected property owner shall be required to file all necessary permits with the City Department of Public Works as may be required for the new connection and any excavation located within the public right-of-way.

Sec. 9-5-2 Failing Laterals.

- (a) **Lateral Replacement Ordered.** In the event that a lateral begins to fail as evidenced by leaks, plugs, collapsing lines, or other defect, the City shall have the authority to order the

replacement of the lateral in question whether within the street right-of-way or on private property:

- (1) The City shall issue an order, via certified mail, to the affected user, and the property owner of record if different than the affected user, providing a deadline of one hundred eighty (180) days for connection to the new, relocated or replacement main.
 - (2) The notice shall include the reason for the connection order and the consequences for not undertaking the required connection in the specified time frame.
 - (3) The one hundred eighty (180) day time frame may be shortened for emergency situations requiring immediate attention.
 - (4) Except in the case of emergency circumstances, no utility user shall be required to undertake a new connection to the City's utilities between November 1st and April 15th.
- (b) **Existing Multiple Services on a Single Lateral.**
- (1) When any sewer or water lateral is to be relaid and there exist two (2) or more structures on such lateral, each structure shall be disconnected from such multiple laterals and a new utility lateral shall be installed for each structure.
 - (2) When any sewer or water lateral serving two (2) or more structures becomes problematic by causing backups or service disruptions, the City may issue orders to relay the laterals as described in Subsection (b)(1) above.

Sec. 9-5-5 Lateral Trespass.

Many instances exist in the City of Washburn in which laterals cross multiple parcels of privately owned property between the location of the utility customer and the publicly operated and maintained utility main. In instances in which the utility customer cannot provide a recorded legal easement granting rights for the continued operation, repair, and replacement of said utility lateral, the City may, in the interest of insuring the health and wellbeing of its residents, order the affected property owner to make a new connection to the utility mains adjoining the parcel in question and the abandonment of the old lateral.

Sec. 9-5-6 Abandonment and Termination of Use of Laterals.

- (a) All abandoned laterals shall be closed and sealed in a permanent manner to prevent leakage and infiltration as directed by the Director of Public Works.
- (b) All closed laterals shall be inspected by the Director of Public Works or his/her representative.
- (c) Any excavation containing an abandoned or closed lateral shall not be closed prior to an inspection by the Director of Public Works or his/her representative.

- (d) Any excavation closed prior to the inspection by the Director of Public Works or his/her representative shall be ordered opened at the property owner's expense to permit the required inspection.
- (e) The City of Washburn encourages the closing and sealing of laterals to occur outside the confines of structures.

Sec. 9-5-7 When Connection Required.

- (a) All new construction to be used for human habitation within the City of Washburn with available utilities shall be required to immediately connect to the water and sanitary sewer utilities operated by the Washburn Municipal Utilities.
- (b) Connections of existing structures to the utilities operated by the Washburn Municipal Utilities shall be required but only if the Utility fronts the property on which the structure is located and not until the earliest of the following events:
 - (1) Private system failure.
 - a. Failure and/or contamination of the private well serving the property, no new well-drilling to be allowed; or
 - b. Failure of a private on-site waste disposal system.
 - (2) Construction of a new structure on the property.
 - (3) Sale, transfer, or subdivision of the subject property or any part thereof including the sale, transfer, or subdivision of property to children or relatives of the owner or the placement of the property into a trust.
 - (4) Completion of the amortization of any non-deferred special assessment on the property resulting from the installation of public utilities, not to exceed seven (7) years.
- (c) In this Section, the phrase "available utilities" means that utilities have been installed in the block (including any adjacent public right-of-way) where the lot is located. If the lot is not located within a platted block, then the phrase means that the closest point of the lot and the closest utility connection for which the property owner has legal access is five hundred (500) feet or less.
- (d) A utility fronts property if it is in the public right-of-way adjacent on any side to the property.
- (e) Failure to comply with an order for connection pursuant to this Section may result in a penalty as provided under Section 1-1-7. For failure to connect to the sewer utility, the City at its discretion may, in lieu of the penalties provided in Section 1-1-7, assess a penalty equal to the average residential equivalent user cost for the property, plus ten percent (10%) for administrative costs. The City may also pursue all other remedies provided by law, including an order for the City to make the required connection, and to

assess the cost thereof as a special tax against the property with interest at the maximum rate provided in Sect. 281.45, Wis. Stats. Each day of failure to comply with an order for connection is a separate violation.

Sec. 9-5-8 Financing Option Available.

- (a) **Terms.** The City of Washburn shall provide zero and/or interest financing for the complete cost and construction of any hookup charges to the City's water and wastewater utilities, from its undesignated fund reserves to the extent that good accounting practices permit such monies to be available. Such loans will be made available on a first come first serve basis in accordance with the following interest schedule:
- (1) Zero percent (0%) if the hookup is completed within the first six (6) months after utility service is made available or the City orders a connection to be made.
 - (2) One percent (1%) interest if the hookup is completed between six (6) and eighteen (18) months after utility service is made available or the City orders a connection to be made.
- (b) **Timeline.** To qualify for this program, the utility connection must be completed to either the City's water or wastewater utility by December 30, 2007.
- (c) **Conditions of Loan.**
- (1) The loan shall be amortized in five (5) equal payments.
 - (2) Each annual payment is payable to the City on or before October 31st of each year.
 - (3) The first payment shall be due in the calendar year following the year in which the loan is provided.
 - (4) By accepting the loan, the owner of the property agrees that any unpaid installment not made shall constitute a special tax on the property.
 - (5) The loan shall be paid in full upon any sale, transfer or subdivision of the property or any part thereof.
 - (6) This program does not apply to new construction unless the new construction replaces an existing habitable structure on the property.
 - (7) The property owner shall agree to execute all necessary documentation, including loan agreements, promissory notes, property liens, etc., prior to the disbursement of funds.
- (d) **Intent.** The loan program is intended to provide monies sufficient to:
- (1) Provide payment to a licensed plumber for sewer and/or water lateral installation and connection to the sewer and/or water main.
 - (2) Provide for interior plumbing (labor and materials) necessary to facilitate the connection.
 - (3) Pay utility connection fees (if any).
 - (4) Provide costs associated with the proper abandonment of existing laterals, a private well, or private on-site waste treatment system in complete compliance with pertinent

rules and regulations of the Wisconsin Department of Natural Resources and Bayfield County.

- (e) **Program Applicability.** This loan program is primarily oriented to those properties affected by the renovation and extension of the City's utility system as the result of the Rural Development sanitary sewer and water program, but is applicable to all municipal utility extension programs between January 1, 2003 and December 30, 2007 to the extent that good accounting practices permits the City's undesignated fund balance to fund it.
- (f) **Loan Disbursements.** The loan proceeds will be disbursed to the homeowner at such time as all of the following have been accomplished:
 - (1) Receipt of a completed Loan Application including verification of property ownership.
 - (2) Executed loan agreement, promissory note and lien filings have been provided to the City.
 - (3) The appropriate utility accounts have been established with the City.
 - (4) A water meter has been installed on the premises.
 - (5) The physical lateral connections are made.
 - (6) Verification that the work has been undertaken by a licensed plumber and has been constructed in accordance with code.
 - (7) The homeowner has presented documentation to the satisfaction of the City verifying the costs associated with the project.
- (g) **Sunset Provision.** This Section shall expire on December 30, 2007.

Sec. 9-5-9 Special Assessment for Financing of Water and Wastewater Laterals.

- (a) **Authority.** This Section is promulgated pursuant to Sec. 66.0701, Wis. Stats.
- (b) **Application.** Any utility connection financed under Section 9-5-8 shall be subject to a special assessment levied in accordance with the provisions of this Section. The provisions of Sections 3-2-1 through 3-2-13 do not apply to special assessments levied hereunder.
- (c) **Procedure.**
 - (1) All special assessments under this Section shall be levied pursuant to the taxing power of the City and shall be based on the special benefit conferred on the property served by the utility connection financed by the loan extended under Section 9-5-8, and shall not exceed the amount of such loan, plus interest as provided in Section 9-5-8.
 - (2) Any owner of property seeking financing under Section 9-5-8 shall submit an application for such financing, on forms provided by the City. In addition to any other information required on the application, each application shall include the following:
 - a. The name of each owner of the property to be served by the utility connection.
 - b. The street address of the property to be served by the utility connection.

- c. A preliminary or final plan and specifications for the utility connection.
 - d. The estimated cost of the utility connection.
 - e. The amount of the loan requested.
 - f. A statement signed by every owner of the property to be served by the utility connection waiving the right of notice and hearing pursuant to Sec. 67.0703(7)(b), Wis. Stats., and consenting to the levy of special assessment in the amount of the loan, plus interest.
- (d) **Resolution Approving Loan and Special Assessment.** Any approval of a loan under Section 9-5-8 and of a special assessment under this Section shall be by resolution of the Common Council, which shall state:
- (1) The names of all of the owners of the property to be served by the utility connection.
 - (2) The street address and legal description of the property to be served by the utility connection.
 - (3) The principal amount of the special assessment and the interest rate to be charged.
 - (4) The number of installments in which the special assessment is to be paid.
- (e) **Appeal Right.** Any person against whose land a special assessment is levied under this Section may appeal in the manner described in Sec. 66.0703(12), Wis. Stats., within forty (40) days of the date of the Common Council resolution adopted under Subsection (d), above. The City shall make no payment of any loan proceeds under Section 9-5-8 until the expiration of this appeal period.
- (f) **Assessment is a Tax Lien.** Any special assessment levied under this Section shall be a lien against the property assessed from the date of the final resolution of the governing body determining the amount of the levy. The Common Council shall provide for the collection of any such assessment and may establish penalties for payment after the due date. Any assessment or installment not paid by the date specified shall be extended upon the tax roll as a delinquent tax against the property and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes apply to the special assessment, unless otherwise provided by statute.
- (g) **Reassessment of Invalid Lien.** If any assessment or charge levied under this Section is invalid because of any reason, the Common Council may reassess such assessment or charge pursuant to the provisions of any applicable law.

Title 9 ► Chapter 6

Stormwater Utility

9-6-1	Findings and Purpose
9-6-2	Stormwater Utility Created
9-6-3	Authority of the Stormwater Utility
9-6-4	Definitions
9-6-5	Stormwater Utility Rates
9-6-6	Credits
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9-6-8	New Construction
9-6-9	Method of Appeal
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9-6-11	Stormwater Utility Budget
9-6-12	Transfer of Assets and Outstanding Debt
9-6-13	Penalty
9-6-14	Severability
9-6-15	Effective Date

Sec. 9-6-1 Findings and Purpose.

- (a) **Findings of Fact; Purpose of Stormwater Utility.** The Common Council finds that the management of stormwater and other surface water discharges within the City of Washburn is a matter that affects the health, safety and welfare of the City, its citizens and businesses, and others in the surrounding area. Failure to effectively manage stormwater affects the sanitary sewer utility operations of the City by, among other things, increasing the likelihood of infiltration and inflow into the sanitary sewer system. Surface water runoff may cause erosion of lands, threaten residences and businesses with water damage, and create environmental damage to the rivers, streams, and other bodies of water within and adjacent to the City of Washburn, including Lake Superior. By protecting the environmental quality in and near the City, a system for the collection and disposal of stormwater provides services to all properties within the City and surrounding areas, including those properties not directly served by the system. The cost of operating and maintaining the City stormwater management system and financing necessary repairs, replacements, improvements, and extensions thereof should, to the extent practicable, be allocated in relationship to a parcel's contribution to stormwater carried by the system.

(b) **Cost Structure and Allocation.**

- (1) It is impracticable to calculate the particular contribution of each parcel to the total stormwater carried by the system. However, it is possible using standard engineering procedures to estimate the average relative contributions to the system by parcels based on their primary land use.
- (2) The principles and assumptions stated in the report prepared by SEH entitled "*Financing Washburn's Storm Sewer Management Program Using A Storm Water Utility: Final Report To The City of Washburn*" (June, 2005) are the principles and assumptions upon which the cost structure and allocation in this Chapter are based.

Sec. 9-6-2 Stormwater Utility Created.

There is hereby established a Stormwater Utility for the City of Washburn. The City Administrator or designee shall manage the Utility. The operation of the Utility and the City Administrator's management thereof shall be under the supervision of the Common Council.

Sec. 9-6-3 Authority Of The Stormwater Utility.

The Stormwater Utility may acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage, and finance such facilities, operations and activities, as are deemed by the City to be proper and reasonably necessary for a system of storm and surface water management. These facilities may include, without limitation due to enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls, detention ponds and basins, streets, roads, curb and gutter, ditches, and such other facilities as will support a stormwater management system.

Sec. 9-6-4 Definitions.

In this Chapter, words and phrases have the following meanings:

- (a) **City.** The City of Washburn, Bayfield County, Wisconsin.
- (b) **Impervious Area or Impervious Surface.** A surface, measured on a horizontal plane, which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by rain water or the runoff from snow melt. It includes, but is not limited to, streets, roofs, sidewalks, parking lots and other similar surfaces, and semi-impervious surfaces such as highly compacted clay or gravel. A "pervious" area is anything that is not impervious.
- (c) **Parcel.** A parcel as established for tax and utility billing purposes.

- (d) **Residential Parcel.** A parcel on which is located a single-family dwelling or a two-family dwelling, as those terms are defined in Sec. 13-1-170(a)(31) and (32) of the City of Washburn Code of Ordinances.
- (e) **Stormwater Conveyance System.** The system of streets, curbs, gutters, berms, swales, landscaping, detention and retention ponds or basins, pipes, outfalls, inlets, and other components of City infrastructure owned or maintained by the City for the purpose of managing, gathering, transmitting, or conveying stormwater. This term includes tributaries, creeks, rivers, and streams improved by the City to enhance their ability to convey stormwater.
- (f) **Stormwater Billing Year.** The year starting on January 1 annually and ending on December 31, annually.
- (g) **Stormwater Utility.** The utility established under this Chapter for the purpose of managing stormwater and imposing charges for the recovery of costs connected with such stormwater management.
- (h) **Stormwater Utility Fee.** The fee imposed under this Chapter for the rendering of Stormwater Utility services by the City.
- (i) **Vacant Land.** Land that is not developed in any way and that has not been developed in any way for ten (10) years, and that has soils that are not impacted or compacted.

Sec. 9-6-5 Stormwater Utility Rates.

- (a) **Generally.** This Section establishes the basis for calculating rates of the Stormwater Utility. The actual rates will be set upon recommendation of the Utility and resolution of the Common Council. Annual rates set by the Common Council shall remain in effect from year to year unless modified by resolution of the Common Council. All rates established pursuant to this Chapter shall be fair and reasonable. A schedule of current rates shall be maintained and on file in the office of the City Clerk-Treasurer.
- (b) **Stormwater Utility Expenses.** The Stormwater Utility rates shall reflect all of the Stormwater Utility expenses, which shall consist of the following:
 - (1) **Base Costs.** These costs include the Stormwater Utility's estimated annual system-wide administrative and management costs, water quality costs, and all other costs not included in operation and maintenance costs or capital and debt service costs as set forth in Subsections (b)(2) and (3) below.
 - (2) **Operation and Maintenance Costs.** These costs include the Stormwater Utility's estimated annual cost of operating and maintaining the City's stormwater conveyance system.
 - (3) **Capital Improvement and Debt Services Costs.** These costs include the current and estimated capital improvement costs and debt service payments for the City's stormwater conveyance system.

- (4) **Stormwater Credits for Best Practices and Special Situations and Incentive Payments.** These costs include the estimated credits that will be given to landowners for implementing best practices to reduce stormwater runoff and to address special situations, and the cost of providing incentives for landowners to implement stormwater reduction strategies.
- (c) **Calculation of Rates.**
 - (1) **Residential Parcels.** Residential parcels shall be assessed on a per parcel flat-fee basis, which shall be set by the Common Council pursuant to Subsection (a).
 - (2) **Commercial, Industrial and Institutional Parcels.** Commercial, industrial and institutional parcels shall be assessed on a per-acre basis. The charge per acre shall be calculated by determining the fee per acre for residential land use, and multiplying it by the Utility Factor stated below:

Classification	Land Use	Utility Factor
1	Residential	1.00
2	Commercial	1.20
3	Industrial	1.06
4	Institutional	1.20
5	Park/Open Space/Cemeteries	Exempt
6	Road Rights-of-Way	Exempt
7	Lakes/Streams/Wetlands	Exempt
8	Agricultural	Exempt
9	Vacant/Undeveloped	Exempt

- (d) **Calculation of Fee Per Acre for Residential Land Use.** The fee per acre for residential land use is calculated as follows:
 - (1) Determine the percentage of total run-off in the City of Washburn which is attributable to residential property;
 - (2) Multiply the percentage derived in Step One [Subsection (d)(1)above] by the Stormwater Utility expenses; and
 - (3) Divide the product derived in Step Two [Subsection (d)(2) above] by the estimated total acres of residential land use in the City.
- (e) **Utility Factor.** The Utility Factor is the ratio of runoff volume in inches for a particular land use to the runoff volume in inches for an average residential land use, assuming a two (2) inch rainfall and Natural Resources Conservation System (NRCS) Type D soil condition.
- (f) **Runoff Volume.** Runoff volume shall be based on the runoff equation in Section 4 - Hydrology in the "Soil Conservation Service National Engineering Handbook. The equation is as follows:

$$Q = \frac{(P - 0.2S)^2}{P + 0.8S}$$

where Q is actual runoff volume

S is potential maximum retention in inches

P is potential maximum runoff

and where S can be expressed in terms of the runoff index or curve number (CN) as follows:

$$S = (1000/CN) - 10$$

- (g) **Runoff Indices or Curve Numbers.** Runoff indices or curve numbers for property classifications are as follows:

Classification (CN)	Land Use	Runoff Index
1	Residential	92
2	Commercial	95
3	Industrial	93
4	Institutional	95
5	Park/Open Space/Cemeteries	Exempt
6	Road Rights-of-Way	Exempt
7	Lakes/Streams/Wetlands	Exempt
8	Agricultural	Exempt
9	Vacant/Undeveloped	Exempt

- (h) **Notice of Stormwater Utility Fee Basis.** Each owner of a commercial, industrial, or institutional parcel shall be provided written notice of the number of acres upon which the parcel's Stormwater Utility fee is based not less than sixty (60) days before the first stormwater utility fee is sent based on that number of acres.
- (i) **Fee Increases.** The residential flat fee and the commercial, industrial and institutional per-acre fees shall not be increased by more than ___% in any one (1) year, except upon an affirmative vote of two-thirds of all members of the Common Council.

Sec. 9-6-6 Credits.

- (a) **Credit for Stormwater Diversion or Best Practices.** A credit may be granted to a commercial, industrial, or institutional parcel under the following circumstances:

- (1) **When The Property Owner Can Demonstrate A Reduction Of At Least 20% Of The Amount of Stormwater Leaving The Parcel Due To The Use Of A Stormwater Best Management Practice.** The fee charged to the parcel shall be reduced by the percentage reduction in runoff that can be shown, up to a maximum set forth in Subsection (d).
 - (2) **When At Least 20% Of The Runoff From That Parcel Drains Into A Natural Body Of Water.** Such discharge must be direct and not through any portion of the stormwater conveyance system, and the drainage must not be in violation of any environmental law or any federal, state, or local surface water drainage requirement, and the property owner must possess all required permits for such discharge. The fee charged to the parcel will be reduced by the percentage reduction in runoff that can be shown, up to a maximum set forth in Subsection (d).
 - (3) **When The Parcel Contains Vacant Land That Meets The Criteria Set Forth Below.** The fee charged to the parcel will be reduced by the parcel's percentage of vacant land, up to a maximum set forth in Subsection (d):
 - a. The vacant land must be not less than fifty percent (50%) of the total parcel.
 - b. The vacant land is not counted toward green space under Subsection (a)(3) above.
 - (4) **Combination of Runoff Reductions Under Subsections (a)(1), (2), and (3) to Achieve a 20% Reduction.** A property owner will qualify for a reduction in the fee if the combination of the percentage reductions under Subsections (a)(1), (2), and (3) equals at least twenty percent (20%), provided that the reduction under each Subsection is at least ten percent (10%). The reduction in the fee shall be equal to the combined percentage under Subsections (a)(1), (2) and (3), up to the maximum set forth in Subsection (d).
- (b) **Credit Application; Documentation.** A land owner must apply to receive a credit and must provide documentation, including drawings and calculations meeting engineering standards and practice, to support the application. An application must be received no later than one hundred twenty (120) days before the start of the stormwater billing year to be considered for the credit in the following year. Any landowner who submits an application shall be deemed to have granted permission to the City Administrator or designee to have access to the property to verify the facts provided in the application. The City Administrator shall grant, partially grant, or deny in writing each application within seventy-five (75) days of its receipt by the City.
- (c) **Alternative Methods for Credit.** From time to time, the Public Works and Utilities Committee may recommend to the Common Council specific Best Management Practices to approve for credit under this Section. A landowner may apply for a credit under a practice not designated by the Common Council as a Best Management Practice if the landowner can demonstrate a reduction of at least twenty percent (20%) of the amount of stormwater leaving the parcel due to the practice.

- (d) **Maximum Credit Permitted.** The combined credits granted to any parcel may not exceed seventy-five percent (75%) of the Stormwater Utility fee charged to the parcel.
- (e) **Application Fee.** An application for a credit under this Section shall be accompanied by an application fee as determined annually with the adoption of the City's fee schedule.
- (f) **Application Timetable.** A landowner may apply for a credit under this Section against charges for 2005 within sixty (60) days of the original date of approval of this Chapter and against charges for 2006 within the time provided in Subsection (b) or within sixty (60) days of the date of original approval of this Chapter, whichever is later. If a decision is not rendered by the City Administrator by the start of the stormwater billing year, the landowner shall pay the full Stormwater Utility fee for the parcel, but if granted a credit shall be granted the credit retroactive to the beginning of the stormwater billing year.

Sec. 9-6-7 Billing.

- (a) **Monthly Charges.** The annual Stormwater Utility fee calculated for each parcel under Section 9-6-5 shall be divided by twelve (12) into monthly charges and billed at the same frequency as the City's water and sewer charges. The City Clerk-Treasurer shall collect the charges of the Stormwater Utility.
- (b) **Statement Issuance.** The bills for Stormwater Utility fees shall be mailed to the recipient of the parcel's water bills and shall be payable by that recipient.
- (c) **Delinquent Stormwater Utility Fees.** If any Stormwater Utility fee remains unpaid after a period of twenty (20) days from the date of the utility bill, such bill shall become a delinquent special charge and shall become a lien as provided in Secs. 66.0821(4)(d) and 66.0809, Wis. Stats. These charges shall automatically be extended upon the current or next tax roll as a delinquent tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charges. Bills not paid within twenty (20) days of issuance shall be assessed a one and one-half percent (1 1/2%) per month late payment charge.
- (d) **Delinquent Special Charge Penalty.** All delinquent special charges shall be subject to a ten percent (10%) penalty in addition to all other charges and penalties or interest when the delinquent special charge is extended upon the tax roll.

Sec. 9-6-8 New Construction.

- (a) Except for single family units, a property owner shall be responsible for submitting a stormwater utility service application at the time a building permit is issued or a site plan review is conducted. The application shall be made on a form prescribed by the City and provided with each application for a building permit or application for site plan review.

Failure to submit such a Stormwater Utility service application or providing false information on such form shall be a violation of this Chapter.

- (b) On new single family units, the stormwater fee shall be charged at the time an application is made for water service.

Sec. 9-6-9 Method of Appeal.

- (a) **Appeals Procedure For Acreage Assignments.** The assignment by the City of a particular acreage to a commercial, industrial, or institutional parcel may be appealed by the owner of the parcel as follows:

- (1) **Written Appeal Required.** A written appeal shall be filed with the City Clerk-Treasurer within thirty (30) days of the date of mailing of the notice of acreage, as provided for by Section 9-6-5(h). The appeal shall state the number of acres that the property owner believes the parcel to be, and shall be accompanied by a survey by a Wisconsin Licensed Land Surveyor showing the parcel's acreage, or a letter from such a surveyor indicating that the surveyor has been retained to conduct such a survey and the date by which the survey will be completed. Failure to file an appeal within thirty (30) days of mailing waives all right to later challenge the assignment. Filing of an appeal constitutes the consent of the property owner to the City Zoning Administrator or designee for entry upon the property to inspect it at any reasonable time prior to the hearing on the appeal. No appeal shall be heard if such entry is denied.
- (2) **Hearing.** The Common Council shall conduct a hearing on any appeal. The property owner will state the basis for appeal and present any evidence in support of the appeal. The City Zoning Administrator or designee will present evidence in support of the acreage assignment. The rules of evidence applicable in judicial proceedings shall not apply to appeals under this Section.
- (3) **Council Determination.** The Common Council will determine in its discretion the acreage of the parcel based on the measurements and survey of the property, and will inform the parcel owner in writing of its decision. The Common Council may, in its discretion, require access to the property to assist in its determination.

- (b) **Appeals Of Decision Of City Administrator Regarding Credit.** The decision of the City Administrator partially granting or denying a request for a credit under Sec. 9-6-6 may be appealed by the owner of the parcel as follows:

- (1) **Written Appeal Required.** A written appeal shall be filed with the City Clerk-Treasurer within thirty (30) days of the date of the decision specifying all bases for the appeal. Failure to file an appeal within thirty (30) days of the decision waives all right to later challenge the decision. Filing of an appeal constitutes the consent of the property owner to the City Zoning Administrator or designee for entry upon the

- property to inspect it at any reasonable time prior to the hearing on the appeal. No appeal shall be heard if such entry is denied.
- (2) **Hearing.** The Common Council shall conduct a hearing on any appeal. The property owner will state the basis for appeal and present any evidence in support of the appeal. The City Zoning Administrator or designee will present evidence in support of the decision. The rules of evidence applicable in judicial proceedings shall not apply to appeals under this Section.
 - (3) **Council Determination.** The Common Council will determine in its discretion whether the City Administrator's credit decision is fair and reasonable based on the standards for granting credits set forth in Sec. 9-6-6, and will inform the parcel owner in writing of its decision. The Common Council may, in its discretion, require access to the property to assist in its determination.

Sec. 9-6-10 Special Charge Authority.

In addition to any other method for collection of the charges established pursuant to this Chapter for Stormwater Utility costs, the Common Council finds that these charges may be levied on property as a special charge pursuant to Sec. 66.0627, Wis. Stats.

Sec. 9-6-11 Stormwater Utility Budget

The Stormwater Utility finances shall be accounted for in a separate Stormwater Utility enterprises fund by the City. The Utility shall prepare an annual budget, which is to include all administration, management operation, maintenance, debt service, capital improvement and other costs related to the operation of the Stormwater Utility. The budget is subject to approval by the Common Council. Any excess of revenues over expenditures in a year will be retained by the stormwater enterprise fund for subsequent years' needs.

Sec. 9-6-12 Transfer Of Assets And Outstanding Debt.

- (a) **Assets.** The land rights and improvements of the City, or such rights determined to exist, for the following components of the public Stormwater Utility System are hereby transferred to the land assets of the Washburn Stormwater Utility:
 - (1) Stormwater sewers, drainage ways, channels, ditches, and other stormwater conveyance systems;
 - (2) Inlets, catch basins, retention ponds and related stormwater control features;
 - (3) Stormwater pumping stations, lift stations, and access structures;
 - (4) Greenways;

- (5) Lands on which the above features lie upon the discretion of the Council;
 - (6) Fees collected for stormwater management and fees collected in lieu of land dedication.
- (b) **Liabilities.** Upon original adoption of this Chapter, the Stormwater Utility shall assume the responsibility for debt obligation on all outstanding general debt issued for storm drainage purposes including obligations issued by the City in the years 2003, 2004, and 2005 and identified by the City Administrator as being attributable to stormwater management.

Sec. 9-6-13 Penalty.

The City may prosecute any person violating any provision of this Chapter who shall, upon conviction, pay a forfeiture not to exceed Three Hundred Dollars (\$300.00) for each offense, in addition to the costs of prosecution which are allowed by law. Each day during which a violation exists shall constitute a separate offense. Prosecution under this Section shall not prevent the City from seeking any other remedy as provided for by this Chapter or the law of the State of Wisconsin.

Sec. 9-6-14 Severability.

If any provision of this Chapter is found to be illegal, the remaining provisions shall remain in effect.

Sec. 9-6-15 Effective Date.

This Chapter shall take effect upon passage and publication. The City Administrator and Clerk-Treasurer shall implement this Chapter within ninety (90) days of original passage. Stormwater Utility fees shall be effective July 1, 2005, and may be billed retroactively to that date.