



AGENDA OF THE REGULAR MEETING OF  
THE CITY COUNCIL  
CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA  
June 9, 2015  
7:00 P.M.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**APPROVE AGENDA**

**OPEN PUBLIC FORUM**

- A. Gene Altstatt & Jane Harper - White Bear Lake Conservation District

**ANNOUNCEMENTS**

**CITY BUSINESS – CONSENT AGENDA**

- A. Approval of Regular Meeting May 12, 2015 Minutes\*
- B. Resolution 2015-10, Establishing Limited Clean up and Property Damage Protection for Sewer Back-ups and Water Main Breaks for Water and Sewer Customers\*
- C. Set a Public Hearing for the July 14, 2015 City Council Meeting to Set Water Utility Rates

**CITY BUSINESS – REGULAR AGENDA**

- A. Water Utility Rate Discussion
- B. Approval of Treasurer's Report\*
- C. Resolution 2015-11, Approving the Request of CenturyLink to Operate a Cable Franchise in the City of Birchwood Village\*
- D. First Reading of Ordinance 2015-06-01, Adding Water Conservation Language to City Code\*
- E. Consideration of Adding Tree Preservation Language to City Code\*
- F. City Administrator's Report

\* Denotes items that have supporting documentation provided

G. City Attorney's Report

**ADJOURN**

\* Denotes items that have supporting documentation provided

**CITY OF BIRCHWOOD VILLAGE  
REGULAR CITY COUNCIL MEETING  
May 12, 2015**

**MINUTES**

**MEMBERS PRESENT:** Mayor Mary Wingfield; Councilmembers: Bill Hullsieck, Randy LaFoy, and Kevin Woolstencroft

**MEMBERS ABSENT:** Councilmember Mark Anderson

**STAFF PRESENT:** Chris Mickelson, City Administrator; Mike Anderson, City Treasurer

**OTHERS PRESENT:** John Lund, Parks Commission Chair

Mayor Wingfield called the regular meeting to order at 7:00 p.m. The Pledge of Allegiance was recited.

**AGENDA APPROVAL:**

**MOTION WAS MADE BY COUNCILMEMBER HULLSEIK AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO APPROVE THE AGENDA AS PRESENTED. ALL AYES. MOTION PASSED.**

**OPEN PUBLIC FORUM:**

No comments from the public were received.

**ANNOUNCEMENTS:**

Councilmember LaFoy stated the plant exchange will take place on Saturday, June 6<sup>th</sup> at 10:00 a.m. at City Hall. Residents can bring garden tools to trade or exchange with other residents. Also the City Wide Garage Sale will take place on June 13<sup>th</sup>.

**CITY BUSINESS - CONSENT AGENDA**

**A. Approval of Regular Meeting April 14, 2015 Minutes**

**MOTION WAS MADE BY COUNCILMEMBER LAFOY, SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO APPROVE THE CONSENT AGENDA AS PRESENTED. ALL AYES. MOTION PASSED.**

**CITY BUSINESS - REGULAR AGENDA**

**A. Approval of Treasurer's Report**

Mayor Wingfield stated that Shelly Rueckert will be presenting updated water rates for consideration at the June Council Meeting to address the Water Enterprise Fund's negative balance.

**MOTION WAS MADE BY COUNCILMEMBER HULLSEIK SECONDED BY COUNCILMEMBER WOOLSTENCROFT, TO APPROVE THE TREASURER'S REPORT AS PRESENTED. ALL AYES. MOTION PASSED.**

**B. Canoe/Kayak Discussion**

**City Administrator Mickelson** stated that all canoe/kayak spaces except one are occupied. All but a few canoes and kayaks have been registered at City Hall. Signs have been placed at each easement informing residents their canoes/kayaks need to be registered. The City will be enforcing the Canoe/Kayak policy as of June 1.

**Parks Commission Chair Lund** recommended construction of one new rack at Dellwood Easement and one new rack at Elm Easement. Additionally Paul Steinhauser will donate \$150 to help with construction.

**MOTION WAS MADE BY MAYOR WINGFIELD SECONDED BY COUNCILMEMBER WOOLSTENCROFT, TO APPROVE THE CONSTRUCTION OF TWO KAYAK RACKS IN AN AMOUNT NOT TO EXCEED \$500.00. ALL AYES. MOTION PASSED.**

**C. 2015 Capital Improvements for Consideration**

**City Administrator Mickelson** stated that Councilmember Anderson has been working with a TA Schifsky regarding Capital Improvements for 2015. Four ideas from Councilmember Anderson were various areas of patch work, manhole replacement, curb damage repair and flume work at the hockey rink.

**Mayor Wingfield** stated the focus should be on present maintenance rather than repair work in the future.

**Councilmember Hullseik** stated that rather than paving the parking lot at the hockey rink, placing class five rock should be sufficient.

**MOTION WAS MADE BY MAYOR WINGFIELD SECONDED BY COUNCILMEMBER LAFOY, TO APPROVE CAPITAL IMPROVEMENT EXPENDITURES IN AN AMOUNT NOT TO EXCEED \$11,000. ALL AYES. MOTION PASSED.**

**D. City Administrator Report**

**City Administrator Mickelson:** Nothing to report.

**ADJOURN**

**MOTION WAS MADE BY COUNCILMEMBER LAFOY, SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO ADJOURN THE MEETING. ALL AYES. MOTION PASSED. MEETING ADJOURNED AT 7:26 P.M.**

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Mary Wingfield  
Mayor

ATTEST:

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Chris Mickelson  
City Administrator-Clerk

Resolution 2015-10

RESOLUTION ESTABLISHING LIMITED CLEAN UP AND  
PROPERTY DAMAGE PROTECTION FOR SEWER BACK-UPS AND  
WATER MAIN BREAKS FOR WATER AND SEWER CUSTOMERS

WHEREAS, the City of Birchwood Village (the Governmental Unit) provides water and sanitary sewer services to property within its jurisdiction; and

WHEREAS, water main breaks may cause water to enter into property causing damage; and

WHEREAS, blockages or other conditions in the Governmental Unit's sanitary sewer lines may cause the back-up of sewage into properties that are connected to those Governmental Unit's sanitary lines; and

WHEREAS, water main breaks and sewer back-ups pose a public health and safety concern; and

WHEREAS, it may be difficult to determine the exact cause and responsibility for a water main break or sanitary sewer back-ups and

WHEREAS, the Governmental Unit desires to encourage the expeditious clean-up of properties that have encountered damage from water main breaks and sewer back-ups; and

WHEREAS, the Governmental Unit desires to minimize the potential of expensive lawsuits arising out of water main breaks and sanitary sewer back-up claims; and

WHEREAS, the Governmental Unit is a member of the League of Minnesota Cities Insurance Trust (LMCIT); and

WHEREAS, LMCIT has offered the Governmental Unit limited "no fault" sewer coverage and water main break coverage (No-Fault Coverage) that will reimburse users of the water and sewer system for certain clean-up costs and property damage regardless of whether the Governmental Unit is at fault.

NOW THEREFORE, BE IT RESOLVED, as follows:

The Governmental Unit, will reimburse water and sanitary sewer customers for up to \$10,000 of clean-up costs and property damages caused by a water main break or sanitary sewer back-up, regardless of whether the Governmental Unit is negligent or otherwise legally liable for damages, subject to the following conditions:

I. Sanitary Sewer Back-Ups. For Sanitary sewer back-ups:

- A. The back-up must have resulted from a condition in the Governmental Unit's sanitary sewer system or lines, and not from a condition in a private line.
- B. The back-up must not have been caused by any catastrophic weather or other event which has been declared by the President of the United States to be a major disaster pursuant to 42 U.S.C. §§ 5121-5206, commonly known as the Stafford Act.

- C. The back-up must not have been caused by an interruption in electric power to the Governmental Unit's sewer system or to any Governmental Unit lift station, which continues for more than 72 hours.
- D. The back-up must not have been caused by an amount of precipitation equivalent to rainfall amounts which exceed:
  - 2.0 inches in a 1-hour period; or
  - 2.5 inches in a 3-hour period; or
  - 3.0 inches in a 6-hour period; or
  - 3.5 inches in a 12-hour period; or
  - 4.0 inches in a 24-hour period; or
  - 4.5 inches in a 72-hour period; or
  - 5.5 inches in a 168-hour period.
- E. Neither the Governmental Unit nor LMCIT will reimburse any costs which have been or are eligible to be covered under a property owner's own homeowners' or other property insurance, or which would be eligible to be reimbursed under a National Flood Insurance Protection (NFIP) policy, whether or not the property owner actually has NFIP Coverage.
- F. The maximum amount that the Governmental Unit or LMCIT will reimburse is \$10,000 per building, per year. A structure or group of structures served by a single connection to the Governmental Unit's sewer system is considered a single building.

II. Water Main Breaks. For water main breaks:

- A. Neither the Governmental Unit nor LMCIT will reimburse any costs which have been or are eligible to be covered under a property owner's own homeowners' or other property insurance
- B. The maximum amount that the Governmental Unit or LMCIT will reimburse is \$10,000 to any claimant, regardless of the number of occurrences or the number of properties affected.
- C. Neither the Governmental Unit nor LMCIT will pay more than \$250,000 for water main break damages resulting from any single occurrence. All water main break damage which occurs during any period of 72 consecutive hours is deemed to result from a single occurrence. If the total water main break damage for all claimants in a single occurrence exceeds \$250,000, the reimbursement to each claimant will be calculated as follows:
  - 1. A preliminary reimbursement figure is established for each claimant, equal to the lesser of the claimant's actual damages or \$10,000.
  - 2. The sum of the preliminary reimbursement figures for all claimants will be calculated.
  - 3. Each claimant will be paid a percentage of his or her preliminary reimbursement figure, equal to the percentage calculated by dividing \$250,000 by the sum of all claimants' preliminary reimbursement figures.

III. The Governmental Unit's determination to make these payments is contingent on and expressly limited to the extent that No-Fault Coverage is in force and available to reimburse the Governmental Unit for the costs set forth herein.

IV. The Governmental Unit retains the right, in its sole discretion, to revoke, rescind, or modify this resolution at any time.

V. The Governmental Unit hereby rescinds any prior resolution providing no-fault sewer backup coverage and water main break coverage.

IN WITNESS WHEREOF, the Governmental Unit, by action of its governing body, caused this Resolution to be approved on \_\_\_\_\_, 20\_\_.

City of Birchwood Village  
Governmental Unit

By: \_\_\_\_\_

Its Mayor

And: \_\_\_\_\_

Its City Administrator

## Chris Mickelson

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**From:** Mark Lenz [MLenz@bearence.com]  
**Sent:** Thursday, June 04, 2015 1:03 PM  
**To:** Chris Mickelson  
**Subject:** City of Birchwood Village re: no fault sewer backup renewal, appt to review ins quotation  
**Attachments:** 2015 renewal ltr.docx; NFSB Coverage Changes.pdf; NFSB Resolution 14-15 rev 11.26.14.docx

Good afternoon Chris, I believe that you have a City Council meeting next Tuesday.

The LMCIT would appreciate it if the City Council could consider the adoption of the attached resolution in order to maintain the No Fault Sewer Backup Coverage that is in place.

In addition, I have an insurance renewal quotation that I would like to review with you. Let me know when you would be available to meet in the next few days. Thanks

**Mark D. Lenz, Sr. Risk Consultant**  
**Bearence Management Group**  
2010 Centre Pointe Blvd.  
Mendota Heights, MN 55120  
P 651.379.7843| C 612.201.0972| F 651.379.7801  
[mlenz@bearence.com](mailto:mlenz@bearence.com)

**Risk Investments Communications Consulting Outsourcing**

**<http://www.bearence.com>**

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CONNECTING & INNOVATING  
SINCE 1913

## **LMCIT No-Fault Sewer Back-up and Water Main Break Coverage**

**Date:** May 28, 2015

**To:** Tracy Haile, Bearence Management Group, LLC

**Email:** THAILE@BEARENCE.COM

**From:** Elisabeth Rosandich  
LMCIT Underwriting  
651-215-4048/800-925-1122 ext. 4048

**Re:** City of Birchwood Village  
**Renewal Period:** 6/12/15 – 6/12/16

According to the Underwriting Criteria for LMCIT's Optional No-Fault Sewer Back-Up Coverage, the City needs to qualify for this coverage each year. Also, in order for the City to qualify for this coverage, a completed No Fault Sewer Back up Application must be submitted annually. I have reviewed the City's expiring covenant along with sewer back-up claim information, if any, and I am pleased to advise that the City of Birchwood Village continues to meet the Underwriting Criteria necessary to qualify for No-Fault Sewer Back-Up Coverage.

LMCIT is here to help. If we can be of any further assistance regarding the maintenance of the City's Sewer Program, feel free to contact me directly at **651-215-4048** or at **800-925-1122 ext 4048**.

**Cc:** Alicja Peterson, LMCIT Underwriting



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SINCE 1913

November 13, 2014

To: LMCIT Members and Agents

From: Pete Tritz, LMCIT Administrator  
Dan Greensweig, LMCIT Assistant Administrator  
Liam Bieber, LMCIT Underwriting Manager

RE: **Coverage Changes to LMCIT's Optional No-Fault Sewer Backup Coverage**

Your city is one of several that purchases LMCIT's optional no-fault sewer backup (NFSB) coverage, which has been offered to cities as an additional-cost option since 2001. This coverage reimburses a property owner for up to \$10,000 (higher limits of \$25,000 and \$40,000 are available) of clean-up costs and damages caused by a sewer backup or water main break, irrespective of whether the city was negligent or legally liable for those damages.

The NFSB coverage was introduced in 2001 after being requested by several cities. The coverage is meant to be fully funded by member cities that choose to purchase it (i.e. not subsidized by member cities that choose not to purchase it), since the intent of the coverage is to really provide a solution for cities that want to cover sewer backup claims or water main breaks, even if the city is not negligent. Of course another intent of the coverage is to help reduce health hazards by encouraging prompt clean-ups.

For 2015, there are important changes to the NFSB coverage that will effectively narrow the coverage. The coverage has always had an exclusion for natural disasters and situations where there's been exceptionally heavy rainfall. The revision makes the coverage more restrictive. That is, there will now be a broader range of events that will be excluded under the NFSB coverage.

**Why is LMCIT making these changes?**

There are currently 77 member cities that purchase NFSB coverage, which generates about \$156,000 in annual premiums. After the heavy rains this summer, specifically the July rainstorms, over 50 claims were submitted under the NFSB coverage, with a total cost in the range of \$500,000. Accordingly, the NFSB coverage program operated at a loss this year, with those losses being funded by LMCIT reserves rather than through the premiums generated by this program.

Because of the way the NFSB coverage is currently written, it could expose LMCIT to an extremely expensive total loss cost in some circumstances which the current premium rates are not adequate to support.

**What are the changes?**

Following are the coverage changes that will be made for renewals on or after November 15, 2014. These changes should reduce the loss costs under this coverage to a level the current rates can support. If your city chooses to continue with the NFSB coverage in 2014-15, you will receive a new endorsement with the changes outlined herein.

- ***Now excludes any situation declared a disaster by FEMA.***

The exclusion for FEMA-declared disasters has been reworded to exclude NFSB coverage in *any weather-related or other event which has been declared by the President of the United States to be a major disaster pursuant to 42 U.S.C. §§ 5121-5206, commonly known as the Stafford Act.*

Coverage language prior to the 2014-15 coverage year referred to situations where FEMA disaster assistance was available, which created an ambiguity as to whether the assistance had to be available to the homeowner in order for the exclusion to apply. Changes this year now exclude any situation declared a disaster by FEMA.

- ***Now excludes any situation where rainfall exceeds certain amounts, which is more restrictive than the "100-year rainfall" standard used in the previous coverage.***

The exclusion for heavy rainfall events has been revised to apply to any situation in which rainfall or precipitation exceeds the following amounts:

- 2.0 inches in a 1-hour period; or
- 2.5 inches in a 3-hour period; or
- 3.0 inches in a 6-hour period; or
- 3.5 inches in a 12-hour period; or
- 4.0 inches in a 24-hour period; or
- 4.5 inches in a 72-hour period; or
- 5.5 inches in a 168-hour period.

Coverage language prior to the 2014-15 coverage year had excluded situations in which rainfall or precipitation exceeded the 100-year rainfall amount for the location. LMCIT will no longer use the 100-year rainfall as an indicator for claim exclusion. It will now be based on the above amounts.

**With the coverage changes taking place, will the premium rates for NFSB coverage change?**

No. Rates for NFSB coverage will not change for the 2014-15 coverage year (which is based on a per sewer connection basis).

**Do we have to pass a new resolution if our city chooses to continue with the NFSB coverage?**

Yes. Part of the process for putting the NFSB coverage in place is for your city council to pass a formal resolution that makes the NFSB protection part of the agreement between the city and the sewer customer. The idea is that by paying their sewer bill, the sewer user is purchasing not just sewer services but also the right to be reimbursed for certain specified sewer backup costs and damages. Because of the coverage changes taking place, NFSB members will need to pass a new resolution so the contractual obligation to provide NFSB costs to water and sewer customers aligns with the coverage you are purchasing with LMCIT to provide those benefits. Attached with this letter is a model resolution that can be used.

**More Information**

If you have additional questions about the changes taking place for the no-fault sewer backup coverage, contact your underwriter at 651.281.1200 or 800.925.1122.

As of 06/05/2015  
 Fiscal Year:2015

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursements</u>	<u>Ending Balance</u>
General Fund	\$557,778.13	\$20,526.89	\$127,721.03	\$450,583.99
Special Rev Projects	\$15,468.65	\$1,349.95	\$10,164.00	\$6,654.60
Spec Rev - Warm House	\$0.00	\$0.00	\$0.00	\$0.00
Sewer 2004 Bonds	\$9,444.86	\$1,222.43	\$9,379.23	\$1,288.06
Birchwood In Re-hab Bond	\$1,157.24	\$0.00	\$1,163.24	(\$6.00)
Sewer Re-hab 2008 Debt	(\$7,179.94)	\$7,179.94	\$243.00	(\$243.00)
Cap Project - PW	\$3,758.91	\$0.00	\$0.00	\$3,758.91
Water Enterprise Fund	(\$7,070.08)	\$22,345.05	\$17,713.24	(\$2,438.27)
Sewer Enterprise Fund	\$72,748.17	\$42,809.82	\$61,197.62	\$54,360.37
Sewer Infrastructure	\$30,000.00	\$0.00	\$26,155.00	\$3,845.00
<b>Total</b>	<b>\$676,105.94</b>	<b>\$95,434.08</b>	<b>\$253,736.36</b>	<b>\$517,803.66</b>

Fund Name: All Funds  
 Date Range: 05/09/2015 to 06/05/2015

<u>Date</u>	<u>Remitter</u>	<u>Description</u>	<u>Receipt #</u>	<u>Total</u>	<u>Account #</u>	<u>Amount</u>
05/18/2015	Randy LaFoy	pet license fee	1449	\$5.00	100-32240	\$5.00
05/18/2015	Tell, Jason	dock fee	1450	\$200.00	100-32260	\$200.00
05/18/2015	Lee Homes LLC	permit fee	1451	\$331.25	100-32100	\$331.25
05/18/2015	All Ways Construction	176 Wildwood permit fee	1452	\$127.78	100-32100	\$127.78
05/18/2015	Genz-Ryan Plumbing & Heating	permit fee	1453	\$155.70	100-32100	\$155.70
05/18/2015	Residents - via St Anthony Village	U/B 05/18/15	1458	\$69.41	601-34110	\$16.00
					601-34160	\$1.94
					601-34170	\$1.59
					605-34160	\$4.52
					605-34190	\$45.36
05/21/2015	Residents - via St Anthony Village	U/B 05/21/15	1457	\$448.67	601-34110	\$25.00
					601-34110	\$136.64
					601-34160	\$3.27
					601-34170	\$4.37
					605-34160	\$5.63
					605-34190	\$25.00
					605-34190	\$248.76
06/02/2015	Gibson, Shawna	Hall Rental Fee	1454	\$25.00	100-34101	\$25.00
06/02/2015	Greene Construction	Building Permit (8 Oakhill)	1455	\$70.25	100-32210	\$70.25
06/02/2015	Colestock, Lianna	Zoning Permits	1456	\$60.00	100-32280	\$60.00
<b>Total For Period</b>				<b>\$1,493.06</b>		
<b>Total Year To Date</b>				<b>\$95,434.08</b>		

Fund Name: All Funds  
 Date Range: 05/09/2015 to 06/05/2015

<u>Date</u>	<u>Vendor Name</u>	<u>Description</u>	<u>Check #</u>	<u>Total</u>	<u>Account #</u>	<u>Amount</u>
05/12/2015	Payroll Period Ending 05/12/2015		28795	\$184.70	100-41400-100	\$184.70
05/12/2015	Xcel Energy	electric for lift stations	EFT042715	\$710.65	100-41940-380 100-45200-380 605-43190-380	\$190.67 \$12.39 \$507.59
05/26/2015	U S Bank	Bond Payment June 1, 2015	28796	\$2,184.29	301-47100-610	\$2,184.29
05/27/2015	Payroll Period Ending 05/27/2015		28797	\$1,505.92	100-41400-100	\$1,505.92
05/27/2015	Payroll Period Ending 05/27/2015		28798	\$184.70	100-41400-100	\$184.70
05/27/2015	PERA	Staff Retirement (5/22/15)	EFT5/22	\$274.40	100-41400-121	\$274.40
06/01/2015	City of White Bear Lake	Fire Services March - May 2015	28799	\$4,510.26	100-42200-305	\$4,510.26
06/01/2015	FP Mailing Solutions	Postage Machine - June - Aug 2015 rental	28800	\$125.34	100-41430-200	\$125.34
06/01/2015	League of MN Cities	Volunteer Insurance Plan June '15 - June '16	28801	\$109.00	100-41945-150	\$109.00
06/01/2015	TSE, INC	City Hall Janitorial Services 5/14/15	28802	\$21.00	100-41940-305	\$21.00
06/01/2015	Washington County	Special Assessment Summary	28803	\$318.00	301-41550-300 303-41550-300 305-41550-300 605-41550-300	\$15.00 \$6.00 \$243.00 \$54.00
06/01/2015	White Bear Township	Weekly Lift Station Check (5/4-5/17)	28804	\$1,099.63	605-43190-305	\$1,099.63
06/01/2015	TSE, INC	City Hall Janitorial Services 4/30/15	28805	\$21.00	100-41940-305	\$21.00
06/01/2015	Washington County	Property Records/Taxpayer Election Services	28806	\$5,642.37	100-41550-305	\$5,642.37
06/01/2015	Ronnan, Kenny	Council Meeting 5/12/15	28807	\$45.00	100-41950-305	\$45.00
06/01/2015	White Bear Township	Weekly Lift Station Check (4/20-5/3)	28808	\$1,605.00	605-43190-305	\$1,605.00
06/01/2015	Gopher State One Call	Locates (29 Tickets)	28809	\$46.50	100-42805-305	\$46.50
06/01/2015	City of Roseville	June 2015 IT/Phone Services	28810	\$404.88	100-41955-305 100-41955-305	\$340.33 \$64.55
06/01/2015	Manship Plumbing & Heating Inc	Monthly Standby/water fountain maint/locates	28811	\$970.00	601-43180-305	\$970.00

**City of Birchwood Village**

**Disbursements Register**

**06/05/2015**

<u>Date</u>	<u>Vendor Name</u>	<u>Description</u>	<u>Check #</u>	<u>Total</u>	<u>Account #</u>	<u>Amount</u>
06/01/2015	On-Site Sanitation Inc	Rental Monthly Units (Two units)	28812	\$180.72	100-45200-305	\$98.43
					100-45200-305	\$82.29
06/01/2015	St. Anthony Village	Q2 2015 UB Admin	28813	\$1,803.23	601-41500-305	\$1,803.23
06/01/2015	MN Department of Health	Q2 Community Water Supply Fee	28814	\$562.00	601-43180-430	\$562.00
06/01/2015	Menards - Oakdale	Kayak Rack Supplies	28815	\$8.46	100-45200-220	\$8.46
06/01/2015	Menards - Maplewood	Kayak Rack Supplies	28816	\$308.94	100-45200-220	\$308.94
06/01/2015	Xcel Energy	electric for street lights	EFT2 6/1	\$1,216.10	100-43160-380	\$1,216.10
06/01/2015	Xcel Energy	electric for lift stations/warming house	EFT6/1	\$542.20	100-41940-380	\$127.33
					100-45200-380	\$12.39
					605-43190-380	\$402.48
06/02/2015	Hunt, Donald	over payment reimbursement	28817	\$28.06	601-49200-810	\$14.00
					605-49200-810	\$14.06
06/05/2015	Wingfield, Mary	Reimbursement for Stamps, Trees	28818	\$964.88	100-41430-810	\$258.72
					100-41430-810	\$208.74
					100-45200-810	\$470.45
					100-45200-810	\$9.99
					100-45200-810	\$16.98
06/05/2015	Payroll Period Ending 06/05/2015		28819	\$1,838.83	100-41400-100	\$1,838.83
06/05/2015	PERA	Staff Retirement (6/5/15)	EFT652015	\$274.40	100-41400-121	\$274.40
<b>Total For Period</b>				<b>\$27,690.46</b>		
<b>Total Year To Date</b>				<b>\$253,736.36</b>		

As of 06/05/2015

**General Fund**

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
General Property Taxes	\$0.00	\$1,661.21	\$1,661.21
Total Acct 310	\$0.00	\$1,661.21	\$1,661.21
Business Licenses and Permits	\$0.00	\$614.73	\$614.73
Total Acct 321	\$0.00	\$614.73	\$614.73
Building Permits	\$0.00	\$1,846.51	\$1,846.51
Kayak/Canoe Permit	\$0.00	\$260.00	\$260.00
Dog Licenses	\$0.00	\$40.00	\$40.00
Spring Leaf Collection	\$0.00	\$2,445.85	\$2,445.85
Dock/Lift Permit Fee	\$0.00	\$200.00	\$200.00
Dock Assn Transfer	\$0.00	\$735.00	\$735.00
Zoning App Fee	\$0.00	\$60.00	\$60.00
Total Acct 322	\$0.00	\$5,587.36	\$5,587.36
Cable Comm. Grant	\$0.00	\$9,607.32	\$9,607.32
Total Acct 336	\$0.00	\$9,607.32	\$9,607.32
City Hall and Garage Rent	\$0.00	\$100.00	\$100.00
Water Fee	\$0.00	\$50.06	\$50.06
State and Misc fees	\$0.00	\$228.31	\$228.31
Total Acct 341	\$0.00	\$378.37	\$378.37
Fines	\$0.00	\$73.33	\$73.33
Total Acct 351	\$0.00	\$73.33	\$73.33
Miscellaneous	\$0.00	\$55.00	\$55.00
Total Acct 361	\$0.00	\$55.00	\$55.00
Interest Earnings	\$0.00	\$207.57	\$207.57
Contrib. and Donations-Private	\$0.00	\$150.00	\$150.00
Refund-Reimbursemnt-Dividend	\$0.00	\$2,192.00	\$2,192.00
Total Acct 362	\$0.00	\$2,549.57	\$2,549.57
<b>Total Revenues</b>	<b>\$0.00</b>	<b>\$20,526.89</b>	<b>\$20,526.89</b>
<b>Other Financing Sources:</b>			
Sale of Investments		\$0.00	
Transfers from other Funds		\$0.00	
<b>Disbursements:</b>			
Publishing	\$0.00	\$608.63	(\$608.63)
Total Acct 411	\$0.00	\$608.63	(\$608.63)
City Council	\$0.00	\$5,047.51	(\$5,047.51)
Total Acct 413	\$0.00	\$5,047.51	(\$5,047.51)
Clerk - Treasurer	\$0.00	\$31,685.90	(\$31,685.90)
Elections	\$0.00	\$300.00	(\$300.00)
Office Operations/Supplies	\$0.00	\$171.36	(\$171.36)
Postage/Postal Permits	\$0.00	\$1,032.72	(\$1,032.72)
Total Acct 414	\$0.00	\$33,189.98	(\$33,189.98)

**City of Birchwood Villagegerim Financial Report by Account Number (YTD)**

**06/05/2015**

Assessing	\$0.00	\$5,642.37	(\$5,642.37)
Total Acct 415	\$0.00	\$5,642.37	(\$5,642.37)
Engineer Service	\$0.00	\$1,356.25	(\$1,356.25)
Total Acct 416	\$0.00	\$1,356.25	(\$1,356.25)
Grants	\$0.00	\$1,686.50	(\$1,686.50)
City Training and Development	\$0.00	\$991.00	(\$991.00)
City Hall-Gov't Buildings	\$0.00	\$1,902.34	(\$1,902.34)
City Insurance	\$0.00	\$951.00	(\$951.00)
Cable Eqpmt and Service	\$0.00	\$225.00	(\$225.00)
Phone/IT	\$0.00	\$2,429.28	(\$2,429.28)
Total Acct 419	\$0.00	\$8,185.12	(\$8,185.12)
Police	\$0.00	\$24,314.98	(\$24,314.98)
Total Acct 421	\$0.00	\$24,314.98	(\$24,314.98)
Fire	\$0.00	\$9,013.35	(\$9,013.35)
Total Acct 422	\$0.00	\$9,013.35	(\$9,013.35)
Building Inspection	\$0.00	\$1,544.87	(\$1,544.87)
Total Acct 424	\$0.00	\$1,544.87	(\$1,544.87)
Other Protection	\$0.00	\$68.38	(\$68.38)
Utility Locates	\$0.00	\$177.05	(\$177.05)
Animal Control	\$0.00	\$250.00	(\$250.00)
Total Acct 428	\$0.00	\$495.43	(\$495.43)
Streets and Road Mntnc	\$0.00	\$5,345.00	(\$5,345.00)
Ice and Snow Removal	\$0.00	\$5,952.85	(\$5,952.85)
Tree Removal	\$0.00	\$1,590.00	(\$1,590.00)
Street Lights	\$0.00	\$7,410.66	(\$7,410.66)
Total Acct 431	\$0.00	\$20,298.51	(\$20,298.51)
Recycle	\$0.00	\$4,968.00	(\$4,968.00)
Total Acct 433	\$0.00	\$4,968.00	(\$4,968.00)
Lawn Care/Mntnc	\$0.00	\$1,312.50	(\$1,312.50)
Total Acct 450	\$0.00	\$1,312.50	(\$1,312.50)
Recreation	\$0.00	\$200.00	(\$200.00)
Total Acct 451	\$0.00	\$200.00	(\$200.00)
Parks	\$0.00	\$9,654.38	(\$9,654.38)
Total Acct 452	\$0.00	\$9,654.38	(\$9,654.38)
CONSERVATION - NATURAL RESOURC	\$0.00	\$1,884.15	(\$1,884.15)
Total Acct 461	\$0.00	\$1,884.15	(\$1,884.15)
Unallocated Expenditures	\$0.00	\$5.00	(\$5.00)
Total Acct 492	\$0.00	\$5.00	(\$5.00)
<b>Total Disbursements</b>	<b>\$0.00</b>	<b>\$127,721.03</b>	<b>(\$127,721.03)</b>
Other Financing Uses:			
Purchase of Investments		\$0.00	
Transfers to other Funds		\$0.00	

**City of Birchwood Village Ledger Financial Report by Account Number (YTD)**

**06/05/2015**

<b>Beginning Cash Balance</b>	<b>\$557,778.13</b>
<b>Cash Balance as of 06/05/2015</b>	<b>\$450,583.99</b>

**City of Birchwood Village Financial Report by Account Number (YTD)**

**06/05/2015**

**As of 06/05/2015**

<b>Special Rev Projects</b>	<u><b>Budget</b></u>	<u><b>Actual</b></u>	<u><b>Variance</b></u>
<b>Receipts:</b>			
Dock/Lift Permit Fee	\$0.00	\$1,199.95	\$1,199.95
Total Acct 322	\$0.00	\$1,199.95	\$1,199.95
Contrib. and Donations-Private	\$0.00	\$150.00	\$150.00
Total Acct 362	\$0.00	\$150.00	\$150.00
<b>Total Revenues</b>	<b>\$0.00</b>	<b>\$1,349.95</b>	<b>\$1,349.95</b>
<b>Other Financing Sources:</b>			
Sale of Investments		\$0.00	
Transfers from other Funds		\$0.00	
<b>Disbursements:</b>			
Unallocated Expenditures	\$0.00	\$10,164.00	(\$10,164.00)
Total Acct 492	\$0.00	\$10,164.00	(\$10,164.00)
<b>Total Disbursements</b>	<b>\$0.00</b>	<b>\$10,164.00</b>	<b>(\$10,164.00)</b>
<b>Other Financing Uses:</b>			
Purchase of Investments		\$0.00	
Transfers to other Funds		\$0.00	
<b>Beginning Cash Balance</b>		<b>\$15,468.65</b>	
<b>Cash Balance as of 06/05/2015</b>		<b>\$6,654.60</b>	

**City of Birchwood Village Interim Financial Report by Account Number (YTD)**

**06/05/2015**

**As of 06/05/2015**

**Spec Rev - Warm House**

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
<b>Total Revenues</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
Other Financing Sources:			
Sale of Investments		\$0.00	
Transfers from other Funds		\$0.00	
Disbursements:			
<b>Total Disbursements</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
Other Financing Uses:			
Purchase of Investments		\$0.00	
Transfers to other Funds		\$0.00	
<b>Beginning Cash Balance</b>		<b>\$0.00</b>	
<b>Cash Balance as of 06/05/2015</b>		<b>\$0.00</b>	

City of Birchwood Village Financial Report by Account Number (YTD)

06/05/2015

As of 06/05/2015

<b>Sewer 2004 Bonds</b>	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Sewer Re-hab A and B	\$0.00	\$65.19	\$65.19
Total Acct 361	\$0.00	\$65.19	\$65.19
<b>Total Revenues</b>	<b>\$0.00</b>	<b>\$65.19</b>	<b>\$65.19</b>
Other Financing Sources:			
Sale of Investments		\$0.00	
Transfers from other Funds		\$1,157.24	
Disbursements:			
Assessing	\$0.00	\$15.00	(\$15.00)
Total Acct 415	\$0.00	\$15.00	(\$15.00)
Bond Payment	\$0.00	\$2,184.29	(\$2,184.29)
Total Acct 471	\$0.00	\$2,184.29	(\$2,184.29)
<b>Total Disbursements</b>	<b>\$0.00</b>	<b>\$2,199.29</b>	<b>(\$2,199.29)</b>
Other Financing Uses:			
Purchase of Investments		\$0.00	
Transfers to other Funds		\$7,179.94	
<b>Beginning Cash Balance</b>		<b>\$9,444.86</b>	
<b>Cash Balance as of 06/05/2015</b>		<b>\$1,288.06</b>	

**City of Birchwood Village Interim Financial Report by Account Number (YTD)**

**06/05/2015**

As of 06/05/2015

**Birchwood In Re-hab Bond**

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
<b>Total Revenues</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
Other Financing Sources:			
Sale of Investments		\$0.00	
Transfers from other Funds		\$0.00	
Disbursements:			
Assessing	\$0.00	\$6.00	(\$6.00)
Total Acct 415	\$0.00	\$6.00	(\$6.00)
<b>Total Disbursements</b>	<b>\$0.00</b>	<b>\$6.00</b>	<b>(\$6.00)</b>
Other Financing Uses:			
Purchase of Investments		\$0.00	
Transfers to other Funds		\$1,157.24	
<b>Beginning Cash Balance</b>		<b>\$1,157.24</b>	
<b>Cash Balance as of 06/05/2015</b>		<b>(\$6.00)</b>	

**City of Birchwood Village Financial Report by Account Number (YTD)**

**06/05/2015**

As of 06/05/2015

**Sewer Re-hab 2008 Debt**

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
<b>Total Revenues</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
Other Financing Sources:			
Sale of Investments		\$0.00	
Transfers from other Funds		\$7,179.94	
Disbursements:			
Assessing	\$0.00	\$243.00	(\$243.00)
Total Acct 415	\$0.00	\$243.00	(\$243.00)
<b>Total Disbursements</b>	<b>\$0.00</b>	<b>\$243.00</b>	<b>(\$243.00)</b>
Other Financing Uses:			
Purchase of Investments		\$0.00	
Transfers to other Funds		\$0.00	
<b>Beginning Cash Balance</b>		<b>(\$7,179.94)</b>	
<b>Cash Balance as of 06/05/2015</b>		<b>(\$243.00)</b>	

**City of Birchwood Village Interim Financial Report by Account Number (YTD)**

**06/05/2015**

As of 06/05/2015

**Cap Project - PW**

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
<b>Total Revenues</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
Other Financing Sources:			
Sale of Investments		\$0.00	
Transfers from other Funds		\$0.00	
Disbursements:			
<b>Total Disbursements</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
Other Financing Uses:			
Purchase of Investments		\$0.00	
Transfers to other Funds		\$0.00	
<b>Beginning Cash Balance</b>		<b>\$3,758.91</b>	
<b>Cash Balance as of 06/05/2015</b>		<b>\$3,758.91</b>	

As of 06/05/2015

**Water Enterprise Fund**

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Water Fee	\$0.00	\$21,418.31	\$21,418.31
Penalty - Late Water/Sewer	\$0.00	\$99.87	\$99.87
State and Misc fees	\$0.00	\$826.87	\$826.87
Total Acct 341	\$0.00	\$22,345.05	\$22,345.05
<b>Total Revenues</b>	<b>\$0.00</b>	<b>\$22,345.05</b>	<b>\$22,345.05</b>
Other Financing Sources:			
Sale of Investments		\$0.00	
Transfers from other Funds		\$0.00	
Disbursements:			
Financial Administration	\$0.00	\$2,709.67	(\$2,709.67)
Total Acct 415	\$0.00	\$2,709.67	(\$2,709.67)
Utility Locates	\$0.00	\$10.15	(\$10.15)
Total Acct 428	\$0.00	\$10.15	(\$10.15)
Water Utility	\$0.00	\$14,979.42	(\$14,979.42)
Total Acct 431	\$0.00	\$14,979.42	(\$14,979.42)
Unallocated Expenditures	\$0.00	\$14.00	(\$14.00)
Total Acct 492	\$0.00	\$14.00	(\$14.00)
<b>Total Disbursements</b>	<b>\$0.00</b>	<b>\$17,713.24</b>	<b>(\$17,713.24)</b>
Other Financing Uses:			
Purchase of Investments		\$0.00	
Transfers to other Funds		\$0.00	
<b>Beginning Cash Balance</b>		<b>(\$7,070.08)</b>	
<b>Cash Balance as of 06/05/2015</b>		<b>(\$2,438.27)</b>	

**City of Birchwood Villagegerim Financial Report by Account Number (YTD)**

**06/05/2015**

As of 06/05/2015

**Sewer Enterprise Fund**

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<b>Receipts:</b>			
Penalty - Late Water/Sewer	\$0.00	\$168.52	\$168.52
State and Misc fees	\$0.00	\$19.92	\$19.92
Sewer Fee	\$0.00	\$42,621.38	\$42,621.38
Total Acct 341	\$0.00	\$42,809.82	\$42,809.82
<b>Total Revenues</b>	<b>\$0.00</b>	<b>\$42,809.82</b>	<b>\$42,809.82</b>
<b>Other Financing Sources:</b>			
Sale of Investments		\$0.00	
Transfers from other Funds		\$0.00	
<b>Disbursements:</b>			
Financial Administration	\$0.00	\$906.44	(\$906.44)
Assessing	\$0.00	\$54.00	(\$54.00)
Total Acct 415	\$0.00	\$960.44	(\$960.44)
Sewer Utility	\$0.00	\$60,223.12	(\$60,223.12)
Total Acct 431	\$0.00	\$60,223.12	(\$60,223.12)
Unallocated Expenditures	\$0.00	\$14.06	(\$14.06)
Total Acct 492	\$0.00	\$14.06	(\$14.06)
<b>Total Disbursements</b>	<b>\$0.00</b>	<b>\$61,197.62</b>	<b>(\$61,197.62)</b>
<b>Other Financing Uses:</b>			
Purchase of Investments		\$0.00	
Transfers to other Funds		\$0.00	
<b>Beginning Cash Balance</b>		<b>\$72,748.17</b>	
<b>Cash Balance as of 06/05/2015</b>		<b>\$54,360.37</b>	

**City of Birchwood Village** ~~gerim~~ **Financial Report by Account Number (YTD)**

**06/05/2015**

**As of 06/05/2015**

<b>Sewer Infrastructure</b>	<u><b>Budget</b></u>	<u><b>Actual</b></u>	<u><b>Variance</b></u>
<b>Receipts:</b>			
<b>Total Revenues</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Other Financing Sources:</b>			
Sale of Investments		\$0.00	
Transfers from other Funds		\$0.00	
<b>Disbursements:</b>			
Sewer Utility	\$0.00	\$26,155.00	(\$26,155.00)
Total Acct 431	\$0.00	\$26,155.00	(\$26,155.00)
<b>Total Disbursements</b>	<b>\$0.00</b>	<b>\$26,155.00</b>	<b>(\$26,155.00)</b>
<b>Other Financing Uses:</b>			
Purchase of Investments		\$0.00	
Transfers to other Funds		\$0.00	
<b>Beginning Cash Balance</b>		<b>\$30,000.00</b>	
<b>Cash Balance as of 06/05/2015</b>		<b>\$3,845.00</b>	

**RESOLUTION 2015-11**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**APPROVING THE REQUEST OF CENTURYLINK TO OPERATE A CABLE  
FRANCHISE IN THE CITY OF BIRCHWOOD VILLAGE**

At a regular meeting of the City Council of the City of Birchwood Village held on Tuesday, June 9, 2015, at Birchwood City Hall, 207 Birchwood Avenue, Birchwood, Minnesota, with the following members present: Mayor Mary Wingfield, Councilmembers Mark Anderson, Bill Hullsiek, Randy LaFoy, and Kevin Woolstencroft, and the following absent: none, the Birchwood City Council resolved:

**WHEREAS,** CenturyLink has expressed interest in seeking cable franchise from the member municipalities of the Ramsey Washington Suburban Cable Commission; and

**WHEREAS,** Such a franchise would enable CenturyLink to compete directly with Comcast for subscribers in the member municipalities; and

**WHEREAS,** CenturyLink cannot provide cable service and compete with Comcast unless it obtains franchise approval from the member municipalities.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Birchwood Village hereby approves the request of CenturyLink to operate a cable franchise in the City of Birchwood Village.

Voting in Favor:

Voting Against:

Resolution duly seconded and passed this 9<sup>th</sup> day of June, 2015.

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Mary Wingfield, Mayor

Attest:

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Chris Mickelson  
City Administrator

## Chris Mickelson

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**From:** Timothy Finnerty [timfinnerty@rwcable.com]  
**Sent:** Wednesday, May 27, 2015 1:23 PM  
**To:** Chris Mickelson  
**Cc:** Randy Lafoy  
**Subject:** Franchising policies & procedures  
**Attachments:** Franchising Policy-May 2015 update.pdf; ATT00001.htm

Hi Chris:

As you know, CenturyLink has expressed interest in the possibility of seeking cable franchise from the member municipalities of the Cable Commission. Such a franchise would enable CenturyLink to compete directly with Comcast for subscribers in our communities. CenturyLink cannot provide cable service and compete with Comcast unless it obtains franchise from member municipalities.

Given this possible interest on the part of CenturyLink, the Cable Commission at its May, 2015, meeting approved the attached policies and procedures for implementing a franchising process. **The Cable Commission now seeks the City's approval of the attached policies and procedures so that the Cable Commission can proceed accordingly.**

Please review these and let me know if you should have any questions. It is our understanding that CenturyLink is eager to move forward in its consideration of franchising cable service in our communities. CenturyLink is pursuing franchises throughout the Twin Cities, and Minneapolis' city council just granted a franchise last week. So, ideally, these policies and procedures can be authorized as soon as possible so we can get a process started for our communities as well.

Thank you!

- Tim Finnerty  
Executive Director  
Ramsey/Washington Cable Commission  
651-775-0042  
[timfinnerty@rwcable.com](mailto:timfinnerty@rwcable.com)

May 11, 2000  
Updated May, 2015

**THE RAMSEY/WASHINGTON COUNTIES SUBURBAN  
CABLE COMMUNICATIONS COMMISSION II**

**POLICIES AND PROCEDURES  
GOVERNING APPLICATION, REVIEW AND RECOMMENDATIONS  
REGARDING GRANT OF COMPETITIVE CABLE FRANCHISES**

**Preamble**

The Ramsey/Washington Counties Suburban Cable Communications Commission II (the "Commission"), on behalf of White Bear Township and the Cities of Birchwood Village, Dellwood, Grant, Lake Elmo, Mahtomedi, Maplewood, North St. Paul, Oakdale, Vadnais Heights, White Bear Lake, and Willernie (collectively, the Member Cities"), administers the cable television Franchises between the Member Cities and the current cable franchisee. The Commission, acting pursuant to a Joint and Cooperative Agreement and authority delegated by the Member Cities thereunder, is responsible for receiving and reviewing cable Franchise applications and for making recommendations to its Member Cities. Only the Member Cities may grant a Franchise.

Modern telecommunications policy, law and regulations encourage the emergence of competition in all telecommunications markets, including competition in the provision of cable services. The emergence of such competition could increase the quality and availability of enhanced telecommunications and video services via Cable Systems, encourage lower rates, encourage better customer service, and generally benefit consumers. Policies and procedures regarding application for and review of applications for competitive cable Franchises will streamline the processing of requests to construct broadband Cable Systems.

In view of the foregoing, the Commission has formulated policies and procedures that govern the submission and review of cable Franchise applications submitted by Applicants seeking to provide Cable Service in all the Member Cities. Pursuant to these Policies and Procedures the Commission has delineated the information which must be provided in an application for a competitive Franchise, detailed a process for review of such application and negotiation of the terms of a Franchise agreement, and provided for the presentation of a formal recommendation regarding the grant of such Franchises to the Member Cities.

**Section 1. Definitions**

"Applicant" shall mean a Cable Company that files an Application with the Commission.

"Application" shall mean the information, documentation, and data, of the form and substance required herein, filed by a Cable Company with the Commission requesting the Commission's consideration regarding any recommendation to grant competitive Franchises in the Member Cities.

"Application Fee" shall mean a fee which is intended to cover all costs incurred by the Commission and the Member Cities related to processing Applications up to and including the grant of a Franchise (if any) including, but not limited to, staff and attorney's time in reviewing and considering an Application and related information, negotiating the terms and conditions of Franchises, and preparing recommendations, Franchises and other documentation related to such Applications.

"Cable Company" shall mean any person or entity owning a significant interest in, controlling, operating, managing or leasing a Cable System or any components thereof in the Public Rights-of-Way within the state or any person seeking a Franchise to do so.

"Cable Service" shall mean (1) the one-way transmission to Subscribers of video programming or other programming services; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services; and shall also include any video programming service for which a franchise from a local government is required under state law.

"Cable System" shall refer to a facility that is a "cable system" under federal law or a cable communications system under state law. The foregoing definition shall not be deemed to circumscribe or limit the valid authority of the Member Cities to regulate or franchise the activities of any other communications system or provider of communications service to the full extent permitted by law.

"Franchise" shall mean any nonexclusive authorization granted by each of the Member Cities in the form of a Franchise, privilege, permit, license or other municipal authorization to construct, own, control, operate, maintain, or manage a Cable System within the Public Rights-of-Way to provide Cable Service within a Member City.

"Institutional Network" shall mean a communications network constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

"Policies and Procedures" shall mean these policies and procedures governing the Commission's processing of Applications for Franchises. "Public Rights-of-Way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, easement or similar property or waters within a Member City in which the Member City now or hereafter holds any property interest, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a Cable System. No reference in these Policies and Procedures to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by a Member City that its interest in or other right to control the use of such property is sufficient to permit use of the property for the purpose of installing, operating and maintaining a Cable System.

"Subscriber" shall mean any person or entity who receives cable service via a Cable System.

## **Section 2. Applicability of Policies and Procedures**

These Policies and Procedures apply to every Cable System and every Cable Company, including a Cable Company which constructs, operates and/or maintains a Cable System or

provides Cable Service in whole or in part through facilities owned, controlled, managed or operated by another provider, that seeks to operate within the territorial limits of one or more Member Cities.

Authority: Minn. Stat. § 238.03

### **Section 3. Franchise Requirement**

Subd. 1. In accordance with state and federal law, each of the Member Cities requires a Franchise of any Cable Company or Cable System providing Cable Service within its territorial limits.

Subd. 2. Nothing in these Policies and Procedures shall be construed to limit the Member Cities' or the Commission's authority to construct, purchase, and operate a Cable System or otherwise provide any telecommunications or Cable Services either for internal purposes or for sale to the public. Rather, these policies are meant to govern the process for issuing a franchise for Member Cities so long as they are part of the Commission.

Authority: Minn. Stat. § 238.08

### **Section 4. Application for Franchise**

Subd. 1. On its own initiative, should the Commission determine it is in the interests of Member Cities to seek Franchise Applications, or in the event a Member City or the Commission receives notice that a Cable Company is interested in applying for a Franchise in a Member City, the Commission shall publish a notice of intent to Franchise within a reasonable time and in accordance with Minn. Stat. § 238.081, Subd. 1, which requires publishing notice of intent to Franchise each week for two successive weeks, allowance of 20 days from initial publication for submission of Applications and a public hearing at least seven days before introduction of the Franchise into proceedings of a Member City.

Subd. 2. Review of Applications. Applications for a competitive Franchise shall contain such information as is required below in these Policies and Procedures and shall be submitted to the Commission. Review by the Commission of any Applications pursuant to these Policies and Procedures and final determination by the Member Cities regarding whether to Franchise such Applicant(s) may be based on any relevant factors. Such relevant factors include any factor that the Commission is required to consider under state or federal law, and may include any other factor the Commission is permitted to consider, including the quality and capabilities of the Cable System that will be constructed; whether the application satisfies cable-related needs and interests of the community, as identified by the Member Cities and the Commission, whether the application adequately provides for capacity, facilities, equipment or financial support for public, educational and government (PEG) use of the system (including institutional network use); whether the applicant is financially, technically and legally able to perform; whether the application evinces an intent to improperly discriminate or deny service to any person, group or persons; and whether the grant is otherwise in the interest of the public.

Subd. 3. Public Hearing on Applications. A public hearing before the Commission affording reasonable notice and a reasonable opportunity to be heard with respect to an Application shall be scheduled in accordance with Minn. Stat. § 238.081, Subd. 6. The Commission may schedule additional hearings as may be appropriate prior to action on an application.

Subd. 4. Negotiation of Franchise Terms. During the period prior to the public hearing on the Application(s), the responsible Commission employee(s) and Applicant(s) may negotiate specific Franchise terms and conditions for recommendation and presentation to the Commission and ultimately the Member Cities. In addition, during this period the responsible Commission employee(s) shall review the Application(s) and may request such additional information necessary to make final recommendations to the Commission and ultimately the Member Cities.

Subd. 5. Determinations. Determinations by the responsible Commission employee(s) regarding the qualifications of Applicant(s) and recommendations to the Member Cities regarding grant of a Franchise shall be made based on information provided by the Applicant(s) as required herein and such other information relevant to consideration of the Application. The responsible Commission employee(s) may, in their sole discretion, consider information developed during any negotiations with the Applicant(s) and any information or evidence adduced by the incumbent Cable Company. After the public hearing referenced in Subd. 3, the responsible Commission employee(s) shall issue written recommendations to the Commission for review and possible transmittal to the Member Cities. These recommendations may include Franchise documents to be potentially recommended to the Member Cities for adoption. If Franchise documents have not been negotiated, or the Commission determines that additional or different terms and conditions are appropriate, Commission may direct responsible employees to engage in further negotiations, and to require preparation of revised recommendations and reports. The Commission will adopt final recommendations for transmittal to Member Cities.

Subd. 6. Award of Franchise. A Franchise may be awarded only by an ordinance adopted by each Member City.

Subd. 7. Costs of Reviewing Application and Issuing Franchise. The Applicant shall pay the Application Fee required below. The Application Fee is required for the purpose of reimbursing the Member Cities and the Commission for all costs associated with processing Applications pursuant to these Policies and Procedures through and including any granting of a Franchise. Any portion of the Application Fee which remains after payment of all the Member Cities' and the Commission's costs will be reimbursed to the Applicant. Should the Application Fee not cover the expenses of the Member Cities and the Commission, those unreimbursed expenses shall be reimbursed prior to any consideration of the Franchises by the Member Cities. A successful Applicant shall be fully responsible to reimburse the Member Cities and the Commission for all costs of awarding the competitive Franchises(s).

Subd. 8. Franchising Nonprofit or Municipally-owned System. Nothing contained in this Section prohibits the Member Cities from franchising a nonprofit or municipally-owned system. The municipality or nonprofit entity shall be considered an Applicant subject to these Policies and Procedures.

Subd. 9. Time for Action. The Commission shall conduct proceedings in a manner that comports with state and federal law, as may be applicable.

Authority: Minn. Stat. § 238.081

## **Section 5. Information Required in Application**

An Application for a competitive Franchise must be signed by an authorized officer or principle of the Cable Company and be notarized and must include at least the following. To

the extent that an Application includes a proposed Franchise and other proposed agreements that provide the information requested, the Application may reference the relevant portion of those documents:

- (1) A statement that the Applicant seeks to construct a Cable System and to provide Cable Services within specifically identified Member Cities;
- (2) The name, street address, e-mail address and telephone number of the individuals who are authorized to provide and certify information on behalf of the Applicant;
- (3) a description of the technology that will be utilized by the Cable System to deliver Cable Services; the total bandwidth that initially will be used for delivery of Cable Services from the curb to the home; the total activated channel numbers that will be available to subscribers initially; the number of unique linear programming services that will be available in each format offered (e.g., SD, UHD, HD, 3D) (and whether there are limits as to the number of channels that may be viewed simultaneously); and to the extent relevant, plans for analog and digital channel capacity, including both the total number of analog and digital channels capable of being energized in the system and the number of analog and digital channels to be energized immediately;
- (4) a statement of the television and radio signals for which permission to carry will be requested from the Federal Communications Commission, or any other required regulatory agency;
- (5) to the extent not included in response to Subdivision 5(3), a description of the proposed system design and planned operation, including at least the following items:
  - (i) the general area for location of antennae and the head end, or description of programming delivery plan if otherwise;
  - (ii) the schedule for activating two-way capacity and any other system capacity to be activated in conjunction with the Cable System;
  - (iii) the type of automated services to be provided;
  - (iv) the minimum number of video channels, other Cable Services, and other kinds of services to be made available to residents;
  - (v) the number and type of channels and services to be made available for community/access programming including a description of differences in the quality, accessibility, recordability or functionality of PEG channels as compared to linear broadcast channels; whether the channels would be available to every subscriber, or only subscribers to certain packages; whether any special equipment is required to view the PEG channels; and whether there are any charges to PEG programmers or Member Cities proposed with respect to PEG; whether signals would be carried in HD or SD or simulcast; and any video on demand provided; and
  - (vi) a plan for provision of facilities and equipment for PEG (including transport paths from points of signal origination to the subscriber), and funding of PEG and/or a plan for interconnection and provision of such programming in cooperation with the incumbent Cable Company;

- (6) plans for the provision of an Institutional Network and capacity for public, educational and government use of an Institutional Network, or an alternative proposed method for providing for the same;
- (7) any other facilities, services, equipment or financial support that applicant proposes to provide (such as courtesy service drops to schools or public buildings) in addition to the support described above and the franchise fee described below;
- (8) a comparison of the Applicant's proposal for PEG use (including institutional network use) as compared to requirements in existing franchises regarding PEG use; and whether (and why) Applicant contends that its proposal, if accepted would be no more favorable, or less burdensome than the requirements in the existing franchise.
- (9) a schedule of proposed rates in relation to the services to be provided, and a proposed policy regarding unusual or difficult connection of services;
- (10) a time schedule for construction of the system with the time sequence for wiring the various parts of the areas to be served. This information should be shown on a map, and the map should clearly show any area identified in the request for proposals for which the applicant does not seek a franchise. Conditions or limitations on the construction of the system to serve the entire proposed franchise area should be noted;
- (11) information supporting and indicating the Applicant's financial, technical and legal qualifications and experience in the cable communications field, if any;
- (12) an identification of the municipalities in which the Applicant either owns or operates a Cable System, directly or indirectly, or has outstanding Franchises for which no system has been built;
- (13) detailed plans for financing of the proposed system, which must indicate every significant anticipated source of capital and significant limitations or conditions with respect to the availability of the indicated sources of capital;
- (14) a statement of ownership detailing the corporate organization of the Applicant, if any, including the names and addresses of officers and directors and the number of shares held by each officer or director, and intracompany relationship including a parent, subsidiary or affiliated company;
- (15) a statement of a form and substance acceptable to the Member Cities and the Commission indemnifying the Member Cities and the Commission fully against any claims or liabilities alleged as the result of the Member Cities' and the Commission's exercise of these Policies and Procedures, including any such claims or liabilities alleged or asserted by the incumbent Cable Company;
- (16) an agreement to pay the Member Cities and/or the Commission a Franchise fee in the same percentage of gross revenues as the incumbent providers, and on the same base;
- (17) the proposed Franchise term;

- (18) whether Applicant is willing to agree to terms required under state law, and if not, the terms to which it objects, the basis for the objection, and how it proposes to address the state law requirement, if at all;
- (19) a notation and explanation of omissions or other variations with respect to the requirements of the Application; and
- (20) submission of an Application Fee in the amount of \$40,000.
- (21) Such other information as may be required under state law.
- (22) If the Applicant claims that the Application is submitted pursuant to, and is subject to the deadlines for action under FCC regulations governing issuance of competitive franchises, the Application must so state clearly, and shall also include all information required by federal law.

Authority: Minn. Stat. § 238.081, Subd. 2 and 4.

**ORDINANCE 2015-06-01**

**CITY OF BIRCHWOOD VILLAGE  
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE ADDING WATER CONSERVATION LANGUAGE TO CITY CODE**

**WHEREAS,** the City of Birchwood Village seeks to encourage and promote wise use of our groundwater resources.

**NOW, THEREFORE, BE IT ORDAINED** that the City Council of the City of Birchwood Village hereby adds the following language to City Code Section 201.440:

MUNICIPAL WATER SYSTEM: CONSERVATION

1. Purpose. To conserve groundwater resources and prevent the wasteful and harmful effects of irrigation during the mid-day hours and during times when it is improvident to irrigate due to excessive moisture.

2. Irrigation Restriction. No person shall irrigate using the public water supply between the hours of 10:00 a.m. and 5:00 p.m. on any day from May 1 through September 30. This water restriction applies to all property within the City.

3. Excessive Moisture Detection. All new automatic irrigation systems must install rain sensors using best available technology on their control systems at the time of installation.

4. Penalty. Failure to comply with this ordinance shall be subject to the following penalties: 1<sup>st</sup> violation \$25.00; 2<sup>nd</sup> Violation \$50.00; 3<sup>rd</sup> and subsequent violations \$100.00.

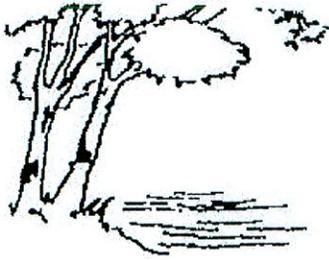
EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council this \_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Mary Wingfield  
Mayor

Attest:

\_\_\_\_\_  
Chris Mickelson  
City Administrator-Clerk



## MEMORANDUM

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**TO:** City Council, City of Birchwood Village  
**FROM:** Mary Wingfield, Mayor  
**DATE:** June 1, 2015  
**SUBJECT:** Consideration of Tree Preservation Language

In the past year there has been considerable tree removal/clear cutting in Birchwood. With the advent of more "tear down" development, the city could lose more of its century old trees without consideration of long term consequences to the community as a whole. The Oakdale code addresses some of these concerns. A review of what other cities have enacted would be helpful. A subsequent workshop would be needed to develop a cohesive approach.

# CHAPTER 22 TREES

<b>Article I</b>	<b>Declaration of Policy and Purpose</b>
<b>Article II</b>	<b>Application</b>
<b>Article III</b>	<b>Tree Preservation Requirements</b>
<b>Article IV</b>	<b>Tree Replacement Schedule</b>
<b>Article V</b>	<b>Incentives for Tree Preservation</b>
<b>Article VI</b>	<b>Disease Control/Tree Trimming</b>

## ARTICLE I. DECLARATION OF POLICY AND PURPOSE

**Sec. 22-1. Purpose.** The City Council has determined that there are many trees growing on public and private premises within the city, the loss of which would substantially depreciate the value of public and private premises, and impair the safety, good order, general welfare and convenience of the public. The City Council desires to protect the integrity of the natural environment and finds that trees, and in particular the scenic Oak, do so by providing for better air quality, scenic beauty and noise buffer; by protection against wind and water erosion, storm water run off, and severe weather conditions; and by providing habitat for birds and other wildlife. Additionally, the City Council finds that mature trees take many years to replace and such trees protect privacy and provide enhancement of property values.

The City Council hereby declares its intention to protect and preserve existing trees and to provide regulations relating to the cutting, removal or killing of trees, with the consequent damage and destruction of the wooded and forested areas of the city, to promote the orderly development of such areas and thereby minimize public and private losses; to insure the maintenance of the natural vegetation and topography; to encourage protection and preservation of the natural environment and beauty of the city; to encourage a resourceful and prudent approach to urban development of wooded areas which provides for minimal tree loss and mitigation of tree removal resulting from development; to provide an objective method to evaluate a development's impact on trees and wooded areas and identify whether and how the impact may be reduced; to provide incentive for creative land use and good site design which preserves trees while allowing development in wooded areas with mitigation or tree removal and destruction; to control and prevent the spread of fatal diseases affecting trees and the insect pests and vectors which carry such diseases; and to provide for enforcement and administration thereby promoting and protecting the public health, safety, and welfare.

No clear cutting of significant woodland areas shall be permitted except pursuant to a duly authorized and approved permit or development plan consistent with the provisions of this chapter.

## ARTICLE II. APPLICATION

These guidelines shall apply to the following site activities in the city not governed by Section 25-175 - Design Standards:

1. All sites of new development,
2. All sites of new building construction,
3. All sites for which application for a city grading permit is being made.

**Sec. 22-2. Definitions.** The following terms, as used in this section shall have the meanings stated:

- **Builder:** Any person or entity to which a building permit is issued.
- **Canopy of a Tree:** The horizontal extension of a tree's branches in all directions from its trunk
- **Coniferous/Evergreen Tree:** A woody plant which, at maturity, is at least twelve (12) feet or more in height, having foliage on the outermost portion of the branches year-round.
- **Construction Area:** Any area in which movement of earth, alteration in topography, soil compaction, disruption of vegetation, change in soil chemistry, or any other change in the natural character of the land occurs as a result of site preparation, grading, building construction or any other construction activity.
- **Deciduous Tree:** A woody plant which, at maturity, is at least fifteen (15) feet or more in height, having a defined crown, and which loses leaves annually.
- **Developer:** Any person or entity that undertakes to improve a parcel of land, by platting, grading, installing utilities, or constructing any building thereon. For purposes of these guidelines, a developer does not include a builder as defines herein.
- **Diameter:** The length of a straight line measured through the trunk of a tree at 54 inches above the ground.
- **Drip Line or Root Zone of a Tree:** An imaginary vertical line that extends from the outermost branches of a tree's canopy to the ground
- **Forester:** A person holding a Bachelor's degree in forestry from an accredited four-year college of forestry.
- **Landscape Architect:** A person licensed by the State of Minnesota as a Landscape Architect.
- **Nurseryman:** A person licensed by the State of Minnesota as a Nurseryman.
- **Significant Tree:** A healthy tree measuring a minimum of eight inches in Diameter for hardwood Deciduous Trees or a minimum of 12 inches in Diameter for softwood Deciduous Trees measured at 54 inches above the ground, and a minimum of 12 feet in height for Coniferous/Evergreen Trees. Some examples of significant deciduous trees include but are not limited to the following:

<b>Hardwood Deciduous &gt; 8"</b>		<b>Softwood Deciduous &gt; 12"</b>
<b>Ironwood</b>	<b>Ash</b>	<b>Cottonwood</b>
<b>Catalpa</b>	<b>Hickory</b>	<b>Poplars/Aspen</b>
<b>Oak</b>	<b>Birch</b>	<b>Silver Maple</b>
<b>Maple (hard)</b>	<b>Basswood</b>	<b>Box Elder</b>
<b>Elm</b>	<b>Walnut</b>	<b>Willow</b>

- **Significant Woodland:** A grouping or cluster of Coniferous and/or upland Deciduous Trees, occupying 500 or more square feet of property, which are comprised predominantly of a single species of Deciduous Trees between four inches and twelve inches in Diameter or Coniferous Trees between four feet and twelve feet in height.

### **ARTICLE III. TREE PRESERVATION REQUIREMENTS**

**Sec. 22-3. Developments.** Unless otherwise determined by the City Council, the following process for preserving trees shall be required for new development in any zoning district; new building construction in any zoning district; any existing commercial, industrial or institutional building to be expanded by ten (10) to fifty (50) percent of its size, where an approved tree preservation plan is not on file with the city; and any site for which application for a city grading permit is being made.

1. Developers are required to do the following:
  - (a) Prepare a Tree Preservation Plan that shall be incorporated on the grading plan.
  - (b) Implement the Tree Preservation Plan prior to and during site development.
  - (c) Submit a performance guarantee for compliance with the Tree Preservation Plan.
  - (d) Comply with the city's Tree Replacement Schedule.
2. The Tree Preservation Plan shall be submitted with preliminary plat plans in accordance with Chapter 21 (Subdivision Regulations) of the City Code, as part of the landscape plan as required under Chapter 25 (Land Use Regulations/Zoning) of the City Code, or as part of the application for a grading permit as required under Chapter 5 (Building Regulations) of the City Code.
3. The Tree Preservation Plan must be certified by a Forester, Landscape Architect, or Nurseryman retained by the developer.

**Exception** - If the land alterations are undertaken on an occupied parcel for the construction of an accessory building or addition to the existing structure and less than 6 significant trees are affected, the owner or contractor can provide the Tree Preservation Plan.

4. The Developer shall be responsible for implementing the Tree Preservation Plan prior to and during site grading and plan development.
5. The Tree Preservation Plan shall include the following items:
  - (a) The name(s) and address(es) of property owners and Developers.
  - (b) Delineation of the buildings, structures, or impervious surfaces situated thereon or contemplated to be built thereon.
  - (c) Delineation of all areas to be graded and limits of land disturbance.
  - (d) Size, species, and location of all significant trees and significant woodlands located within the area to be platted or within the parcel of record. For significant woodlands and large wooded sites, a representative sample may be used to determine the number of significant trees outside the limits of land disturbance.
  - (e) Identification of all significant trees and significant woodlands on all individual lots. (The developer shall be required to submit a list of all lot and block numbers identifying those lots, along with the Tree Preservation Plan).
  - (f) Measures to protect significant trees and significant woodlands.
  - (g) Identification of all Significant Trees and Significant Woodlands proposed to be removed within the construction area.
  - (h) Size, species, and location of all replacement trees to be planted on the property in accordance with the Tree Replacement Schedule.
  - (i) Signature of the person preparing the plan.
6. Measures proposed to protect Significant Trees and Significant Woodlands shall include:
  - (a) Installation of snow fencing, silt fence, or polyethylene laminate safety netting placed at the drip line of significant trees and significant woodlands to be preserved.
  - (b) Identification of any oak trees requiring pruning between April 15 and July 1; any oak trees so pruned shall be required to have any cut areas sealed with an appropriate tree wound sealant.

7. Measures to protect significant trees and significant woodlands may include, but are not limited to:
  - (a) Installation of retaining walls or tree wells to preserve trees.
  - (b) Placement of utilities in common trenches outside of the drip line of significant trees, or use of tunneled installation.
  - (c) Prevention of change in soil chemistry due to concrete washout and leakage or spillage of toxic materials, such as fuels or paints.
  - (d) Use of tree root aeration, fertilization, and/or irrigation systems.
  - (e) Transplanting of significant trees into a protected area for later moving into permanent sites within the construction area.
  - (f) Therapeutic pruning.
8. The Tree Preservation Plan will be reviewed by city staff to assess the best overall design for the project taking into account significant trees and significant woodlands and ways to enhance the efforts of the developer to mitigate damage to significant trees and significant woodlands. The developer is encouraged to meet with staff prior to submission of the preliminary plat application or prior to application for the grading permit, whichever is sooner, to determine the placement of buildings, parking, driveways, streets, storage and other physical features which result in the fewest significant trees and significant woodlands being destroyed or damaged.
9. Significant trees and significant woodlands removal shall be in accordance with the city-approved tree preservation plan. The plan should remove no more than 25% of the total number of significant trees and significant woodlands which were existing prior to the preliminary plat as a result of the following construction activities, approved by the city as a part of a preliminary plat:
  - (a) Site grading.
  - (b) Installation of public utilities including sanitary sewer, storm sewer, water, natural gas, electrical service, and cable TV.
  - (c) Construction of public streets.
  - (d) Construction/grading of drainageways.
  - (e) Filling of any area.
  - (f) Any other activity within the construction area.

Where practical difficulties or practical hardships result from strict compliance with the provisions of this paragraph, city staff may permit the removal of up to an additional 5% of the significant trees and significant woodlands without requiring a variance approval by the City Council.

10. Significant trees and significant woodlands may be removed on individual lots for site grading, utility hook-ups, buildings, parking lots, driveways, storage areas, recreational areas, private streets, or similar site improvements. Significant trees and significant woodlands removal shall be in accordance with the city-approved tree preservation plan. The plan should remove no more than 30% of the total significant trees and significant woodlands that existed prior to the preliminary plat on individual lots in completing these site improvements. Where practical difficulties or practical hardships result from strict compliance with the provisions of this paragraph, city staff may permit the removal of up to an additional 5% of the significant trees and significant woodlands without requiring a variance approved by the City Council.

11. If any significant tree or significant woodland indicated to be saved on the Tree Preservation Plan is destroyed or damaged, the Tree Replacement Schedule will be enforced by the city (see Article 4).
12. The developer shall provide the required performance guarantee outlined in Section 22-07 following approval of the Tree Preservation Plan and prior to any construction and/or grading. The performance guarantee may be included as part of any "performance guarantee" required in conjunction with design standards, site plans, grading, and landscape plans of the City Code.
13. The proposed grading plan shall be submitted to the city at least five working days prior to the issuance of grading permit, to ensure compliance with the approved Tree Preservation Plan. All sites shall be staked, as depicted in the approved grading plan, before grading is to commence. The city shall inspect the construction site prior to the beginning of the grading to ensure that protective fencing and other protective measures are in place. No encroachment, grading, trenching, filling, compaction, or change in soil chemistry shall occur within the fenced areas protecting the root zone of the trees to be saved.
14. The tree protection measures shall remain in place until all grading, construction, and restoration has been completed.
15. After grading, construction, and restoration has been completed a forester, nurseryman, or landscape architect retained by the developer, shall:
  - (a) Certify in writing to the city that the Tree Preservation Plan was followed.
  - (b) Certify in writing to the city that the tree protection measures were installed.
  - (c) Indicate which significant trees and significant woodlands remain and which have been destroyed or damaged.
  - (d) Submit a plan for city review identifying where replacement trees, if required, will be integrated into the approved landscape plan, or another plan, as required by the city.

**Sec. 22-4. Building.** The following process for preserving trees shall be required of all builders.

1. An individual lot Tree Preservation Plan be submitted no later than the application for a building permit. The plan shall be consistent with the original tree preservation plan for the plat, where said plan exists.
2. The builder will be responsible for implementing the Tree Preservation Plan prior to and during construction.
3. The individual lot Tree Preservation Plan must be provided by the builder and include:
  - (a) The name(s) and address(es) of property owners and builders.
  - (b) Delineation of all areas to be graded, limits of land disturbance, and buildings to be situated thereon.
  - (c) Size, species, and location of all significant trees and significant woodlands within the lot.
  - (d) Identification of all significant trees and significant woodlands proposed to be removed within the Construction Area.
  - (e) Measures to protect significant trees and significant woodlands.
  - (f) Signature of the person preparing the plan.
4. Measures proposed to protect significant trees and significant woodlands shall include:
  - (a) Installation of snow fencing, silt fence, or polyethylene laminate safety netting placed at the drip line of significant trees and significant woodlands to be preserved.

- (b) Identification of any oak trees requiring pruning between April 15 and July 1; any oak trees so pruned shall be required to have any cut areas sealed with an appropriate tree wound sealant.
5. Measures to protect significant trees and significant woodlands may include, but are not limited to:
    - (a) Installation of retaining walls or tree wells to preserve trees.
    - (b) Placement of utilities in common trenches outside of the drip line of significant trees or use of tunneled installation.
    - (c) Prevention of changes in soil chemistry due to concrete washout and leakage or spillage of toxic materials such as fuels or paints.
    - (d) Use of tree root aeration, fertilization, and/or irrigation systems.
    - (e) Transplanting of Significant Trees into a protected area for late moving into permanent sites within the Construction Area.
    - (f) Therapeutic pruning.
  6. The Tree Preservation Plan will be reviewed by city staff to assess the best available layout of buildings and driveways that will result in the fewest significant trees and significant woodlands being destroyed or damaged.
  7. Significant tree and significant woodlands removal shall be in accordance with the city-approved Tree Preservation Plan for the lot. The plan should remove no more than 20% of the total number of significant trees and significant woodlands that existed upon the lot prior to the issuance of the building permit. Where practical difficulties or practical hardships result from strict compliance with the provisions of this paragraph, the city staff may permit the removal of up to an additional 5% of the significant tree and significant woodlands without requiring a variance approval by the City Council.
  8. At least three (3) working days prior to construction or grading, builders shall be required to request approval of on-site (installed) tree protection measures by the city.
  9. The city will continue to monitor the tree protection measures at the time of routine inspections.
  10. The tree protection measures shall remain in place until all grading and construction activity is terminated.
  11. If any significant tree indicated to be saved on the Tree Preservation Plan is destroyed or damaged the Tree Replacement Schedule will be enforced by the city (see attachment for guidelines on tree replacement).
  12. The city will inspect the building site in order to determine compliance with the approved Tree Preservation Plan. The city will determine that:
    - (a) Compliance has been met, or
    - (b) Alternative mitigation measures have been implemented, or
    - (c) Appropriate tree replacement measures have been approved by the city.
  13. The builder shall provide the required performance guarantee outlined in Section 22-07 following approval of the Tree Preservation Plan and prior to any construction and/or grading. The performance guarantee may be included as part of any "performance guarantee" required in conjunction with design standards, site plans, grading, and landscape plans of the City Code.

**ARTICLE IV. TREE REPLACEMENT SCHEDULE**

**Sec. 22-5. General Requirements.** Developers and builders will be required to replace all significant tree and significant woodlands that were indicated on the Tree Preservation Plan to:

- (a) Be saved, but which were ultimately destroyed or damaged and,
- (b) Be replaced, in accordance with the tree preservation requirements.

These replacement trees shall be in conjunction with any other landscape requirements of the city.

**Sec. 22-6. Significant Tree Replacement.** Where replacement of a significant tree is required, the developer or builder shall be responsible for furnishing and installing the number and size of tree(s) identified in Category A, Category B, or Category C of the following schedule:

<b>Tree Replacement Schedule</b>				
<b>Size of Tree Damaged or Destroyed</b>		<b>Number of Replacement Trees</b>		
		<b>Category A</b>	<b>Category B</b>	<b>Category C</b>
1	Coniferous - 12' to 24' high	1	2	4
2	Coniferous - 24' or higher	2	4	8
3	Hardwood deciduous 8" - 20" diameter	1	2	4
4	Hardwood deciduous greater than 20" diameter	2	4	8
5	Softwood deciduous 12 - 24" diameter	1	2	4
6	Softwood deciduous greater than 24" diameter	2	4	8
		<b>Size of Replacement Trees</b>		
	Deciduous Trees	Not less than 3" in diameter	Not less than 2.5" in diameter	Not less than 2" in diameter
	Coniferous Trees	Not less than 10' in height	Not less than 8' in heights	Not less than 6' in height
	<b>Type of Replacement Trees</b> Replacement trees shall be of a species similar to the trees which are lost or removed and shall include those species and diversity as determined by City Council resolution.			
	<b>Source of Replacement Trees</b> Replacement trees shall consist of "certified nursery stock" or state inspected transplant stock as defined by Minnesota Statutes 18.46.			

**Sec. 22-7. Location of Replacement Trees.** Replacement trees shall be planted on the subject property in appropriate soil types and in a space large enough to accommodate the natural growth of the planted species. If the site can not accommodate the required replacement trees, those remaining to be planted shall be located other property owned by the developer/builder located within the city, or on property owned by the city. The city shall determine the location of the placement of trees on city property.

**Sec. 22-8. Agreement to Replace Trees - Security.** The builder, developer, owner shall be responsible to remove and restore any replacement tree which is not alive or healthy, one (1) year after the date that the last replacement tree has been planted. Any tree removed shall be replaced with a new healthy tree of the same size and species in place of the removed tree within eight months of removal.

The builder, developer, owner shall provide security to the city for the performance of its obligations pursuant to this article as follows:

- (a) **Form.** The security may consist of a bond, letter of credit, cash, or escrow deposit, all in such form and substance as shall be approved by the City Council.
- (b) **Amount of Security.** The amount of security, unless modified by the City Council, shall be as follows:

**Developers** - A \$1,000 security for each lot with at least one significant tree plus 125% of the estimated cost to furnish and plant the replacement trees ("estimated cost"). The estimated cost shall be at least as much as the reasonable amount charged by nurseries for the furnishing and planting of the replacement trees. The estimated cost shall be subject to approval by the city. In the event the estimated cost submitted by the applicant is not approved by the city, the city shall have the right in its sole discretion to determine the estimated cost.

**Builders** - A \$1,000 security for tree replacement requirements.

- (c) **Release of Security.** The \$1000 per lot developer security will be released for the lots that have secured a builders security on a quarterly basis. The tree replacement security shall be retained for at least one (1) year after the date that the last replacement tree has been planted or, if no replacement trees were required, six months after the certificate of occupancy has been issued. The city may release the security at that time unless the city, upon inspection, finds that any of the replacement trees have died or are unhealthy or if there was any encroachment upon the protective fencing surrounding any tree to be saved. The city may retain that portion of the security equal to the cost of:

- 1 - Removing dead or unhealthy trees and planting replacement trees, or
- 2 - Replacing a tree which protective fencing had been encroached upon.

## ARTICLE V. INCENTIVES FOR TREE PRESERVATION

**Sec. 22-9. Incentives For Tree Preservation.** The City Council declares it necessary and appropriate to provide incentives to assist the developer or builder in meeting or exceeding the tree preservation requirements. The available incentives include:

- (a) **Front and/or Rear Yard Setbacks** - City staff may approve administrative variances to the front or rear yard set back on individual lots to conserve significant trees and/or significant woodlands provided the amount of the variance does not exceed a five foot deviation from the minimum setback requirements for the lot.
- (b) **Development Density Credits** - A bonus of up to ten (10) percent in the development density or lot coverage of portions of a site may be allowed by the City Council to conserve significant trees and/or significant woodlands. The City Council, in determining the reasonableness of the increase in the density or intensity of land use, shall consider the following factors:
  - (1) The location, amount, and proposed use of open space,
  - (2) The location, design and type of dwelling units,
  - (3) The physical characteristics of the site, and
  - (4) The relationship of the proposed dwelling units to nearby developments.

- c) **Wetland mitigation banking credits** - The City Council to conserve significant trees and/or significant woodlands may provide wetland mitigation banking credits in relation to the number, percentage, or acreage of trees preserved.

## ARTICLE VI. DISEASE CONTROL/TREE TRIMMING

**Sec. 22-10. Findings of Fact, Declaration of Purpose.** The city has determined that there are many trees growing on public and private premises within the city, the loss of which would substantially depreciate the value of public and private premises, and impair the safety, good order, general welfare and convenience of the public. The City Council has determined that the health and life of such trees is threatened by fatal diseases and insects such as Dutch Elm, Oak Wilt, and Emerald Ash Borer. The City Council hereby declares its intention to control and prevent the spread of such diseases and the insect pests and vectors that carry such disease and declares them a public nuisance.

**Sec. 22-11. Intent Declared; Authority; Coordination of Program.** It is the intention of the City Council to adopt and enforce regulations to control and prevent the spread of plant pests and diseases pursuant to the authority granted by Minnesota Statutes Section 18G.13. These regulations are directed specifically at the control and elimination of Dutch Elm Disease, Oak Wilt, and Emerald Ash Borer and other epidemic diseases and infestations of shade trees and is undertaken at the recommendation of the Commissioner of Agriculture. The City Forester shall act as coordinator between the Commissioner of Agriculture and the City Council in the enforcement of these regulations.

**Sec. 22-12. Position of Forester Created; General Duties.** The position of City Forester is hereby created. It is the duty of the City Forester to coordinate, under the direction and control of the City Council, all duties of the city relating to the control and prevention of Dutch Elm disease, Oak Wilt disease, Emerald Ash Borer infestation and other epidemic diseases and insect infestations of shade trees, and perform the duties incident to such a program adopted by the City Council.

**Sec. 22-13. Nuisances Declared.** The following things are public nuisances whenever they may be found within the city:

- (a) Any living or standing Elm tree or part thereof infected with the Dutch Elm disease fungus, *Ceratocystis Ulmi* (Buisson) Moreau; or which harbors any of the Elm Bark Beetles, *Scolytus Multistriatus* (Eich.) or *Hylurgopinus Rufipes* (Marsh.);
- (b) Any living or standing Oak tree or part thereof infected to any degree with the Oak Wilt fungus, *Ceratocystis Fagacerarum*.
- (c) Any dead Elm or Oak tree or part thereof, including logs, branches, stumps, firewood or other material from which the bark has not been removed and burned.
- (d) Any living or dead *Fraxinus* spp tree or part thereof infested to any degree with the insect Emerald Ash Borer (*Agrilus Planipennis*).

**Sec. 22-14. Inspections Required; Right to Enter.** The City Forester, or authorized agent, shall inspect all premises and places within the city as often as practical to determine whether any condition described in Section 22-13 exists thereon. The City Forester shall investigate all reported incidents of infection and infestation by Dutch Elm fungus, Elm Bark Beetles, Oak Wilt disease and Emerald Ash Borer. The City Forester or authorized agents may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to them under this Chapter.

**Sec. 22-15. Authority to Take Specimens.** Whenever necessary to determine the existence of Dutch Elm Disease, Elm Bark Beetles, Oak Wilt, or Emerald Ash Borer in any tree, the City Forester or authorized agent may remove or cut specimens from the tree as may be necessary or desirable for diagnosis. The City Forester or authorized agent may forward such specimens to a lab approved by the Minnesota Department of Agriculture for analysis to determine the presence of such disease or infestation. No action to remove living trees or wood shall be taken by the City until diagnosis of the disease or infestation has been made by detection by the City Forester or authorized agent of commonly recognized symptoms, by lab tests, or written consent to the action is obtained from the property owner.

**Sec. 22-16. Abatement Generally.**

- (a) No action to remove, destroy, dispose or require the removal, destruction and disposal of Elm trees, wood infested with Dutch Elm Disease fungus, Oak trees infected by Oak Wilt fungus or Fraxinus spp (Ash) trees or wood harboring Emerald Ash Borer will be taken by the city until a diagnosis of the disease or infestation has been made by detection by the City Forester or agent of commonly recognized symptoms, by lab tests or written consent to the action is obtained from the property owner. When such diagnosis has been made or consent is obtained, the infected or infested tree or wood must be removed, destroyed and disposed of in a manner that will effectively destroy and prevent as completely as possible the spread of the disease or insect infestation.
- (b) When the presence of Elm Bark Beetles has been discovered in or upon any living Elm tree but the presence of Dutch Elm Disease fungus is not then or thereafter diagnosed, the city will require that the tree be treated in a manner that will effectively destroy and prevent the spread of the insect as much as possible. If the City Forester or authorized agent deems that such treatment is not, or because of the extent of the infestation, cannot be effective, the tree must be removed and destroyed.
- (c) When the presence of Emerald Ash Borer has been discovered in or upon a living Fraxinus (Ash) tree, the city will require that the tree be treated in a manner which will effectively destroy and prevent the spread of the insect as much as possible. If the City Forester or authorized agent deems that such treatment is not or, because of the extent of infestation, cannot be effective, the tree must be removed and destroyed.
- (d) Standing dead Elm and Ash trees and Elm and Ash logs, branches, stumps, firewood or other raw material from which the bark has not been removed and which are not infected or infested with Dutch Elm Disease fungus or Emerald Ash Borer must have their bark removed or destroyed or must be treated in a manner which will effectively destroy and prevent as much as possible the spread of the Elm Bark Beetle or the Emerald Ash Borer. If such treatment is not effective, or, because of the extent of infection or infestation, cannot be effective, the trees, logs, branches, stumps, firewood or other raw material must be removed and destroyed.
- (e) The City Forester shall establish a policy with specifications and procedures that are consistent with the specifications and procedures designated or approved by the Commissioner of Agriculture for the treatment, removal, destruction and disposal of trees logs, branches, stumps, firewood and other raw material infected or infested with Dutch Elm Disease fungus, Elm Bark Beetles, Oak Wilt fungus and Emerald Ash Borer.

**Sec. 22-17. Abatement Procedure; Collection of Costs.**

- (a) Whenever the City Forester or authorized agent has reason to believe that a nuisance as defined in Section 22-13 exists on any private property in the city, the City Forester or authorized agent

shall report all findings to the City Council. If the eCity Council determines that a nuisance exists, the owner or person in control of such property on which the nuisance is found shall be notified by certified mail of the nuisance and the notice shall direct that the nuisance be removed or otherwise effectively treated in an approved manner by such owner or person in charge within 20 days of the date of such notice, or provision for the abatement made. The notice shall also state that if such nuisance is not abated within the time provided, nor provision for the abatement satisfactorily made, the city may abate the nuisance at the expense of the owner and that the unpaid charge or a portion thereof for such work will be made a special assessment against the property concerned.

- (b) If the owner or person in control of any private premises fails to have the nuisance removed or otherwise effectively treated within 20 days after the date of notification by mail, the City Forester or authorized agent may proceed to have the nuisance abated and any expense incurred by the city in so doing shall be specially assessed against the property concerned.
- (c) As soon as the abatement has been completed and the cost determined, the City Forester or authorized agent shall prepare an invoice and mail it to the owner, and thereupon the amount shall be due and payable at the City Hall within 30 days of the date of the invoice.
- (d) If the invoice is not paid within 30 days, the City Council may specially assess the costs against the property by following the procedure set forth in Minnesota Statutes Section 429.061.

**Sec. 22-18. Transporting Diseased or Infested Wood.** It shall be unlawful for any person to transport within the city any diseased or infested bark-bearing Elm wood, Oak wood, or Ash wood known to be diseased or infested, without having obtained a written permit from the City Forester or authorized agent. The City Forester or authorized agent shall grant such permits only when the purpose of this article shall be served thereby.

**Sec. 22-19. Treatment of Nearby Trees.** Whenever the City Forester or authorized agent determines that any tree or wood within the city is infected or infested with Dutch Elm Disease fungus, Oak Wilt, or Emerald Ash Borer, upon obtaining the consent of the property owner, the City Forester or authorized agent may treat all nearby high value trees with an effective destroying insecticide. Activities authorized by this section shall be conducted in accordance with technical and expert opinions and plans of the Commissioner of Agriculture and under the supervision of the Commissioner and agents whenever possible.

**Sec. 22-20. Interfering with Enforcement.** It is unlawful for any person to prevent, delay or interfere with the City Forester or authorized agent while he or she is engaged in the performance of duties imposed.

**Sec. 22-21. License Required for Commercial Tree Cutting, Trimming, Pruning, Removal, or Spraying.**

- (a) **License Required.** It shall be unlawful for any individual, partnership or corporation to conduct as a business the cutting, trimming, pruning, removal, spraying or otherwise treating of trees in the city without having first secured a license from the city to conduct such a business. Licenses issued under this section shall expire on December 31 of each year.
- (b) **Application.** An application for a license shall be made at the City's Public Works Department on a form which has been approved by the city, which shows, among other things, the name and address of the applicant, the number of vehicles, together with a description and license number of each vehicle and type of equipment that will be used in providing this service.

- (c) **Fee.** The annual fee for the license shall be set by City Council resolution.
- (d) **Proof of Insurance.** All applicants for a license must file with the city proof of a public liability insurance policy covering all operations of the applicant under this article, during the full term of the license for the sum of \$300,000 combined single limit coverage. The city shall be named as an additional insured. Such policy shall provide that it may not be cancelled by the insurer except after 30 days written notice to the city, and if such insurance is cancelled and the licensee fails to replace it within another policy that conforms to the provisions of this article, the license shall be automatically suspended until the liability insurance is replaced. All applicants for a license must file with the city a certificate of workers' compensation insurance if such insurance is required by state law.
- (e) **Chemical Treatment Requirements.** Applicants who propose to use chemical substances in any activity related to treatment or disease control of trees shall file with the city proof that the applicant or the employee of the applicant administering such treatment has been licensed by the Minnesota Department of Agriculture as a Commercial Pesticide Applicator for the current year of operation.
- (d) **License Revocation.** Failure to comply with any provision of this article may result in the revocation of the license by the City Council, following a public hearing. Written notice of the public hearing shall be mailed at least 10 days prior to the hearing to the current holder of the license. Such notice should outline the violation(s) considered by the city to be grounds for revocation and inform the license holder of the opportunity to be heard at the public hearing.
- (e) **Penalty.** In addition to the revocation or suspension of the license, any person violating any of the provisions of this Section shall be guilty of a misdemeanor. (Ord. 736, 3/23/10).