CHAPTER 1

CODE OF ORDINANCES

1.01 TITLE. This code of ordinances shall be known and may be cited as the Code of Ordinances of the City of Garnavillo, Iowa.

1.02 DEFINITIONS. Where words and phrases used in this Code of Ordinances are defined in the Code of Iowa, such definitions apply to their use in this Code of Ordinances unless such construction would be inconsistent with the manifest intent of the Council or repugnant to the context of the provision. Other words and phrases used herein have the following meanings, unless specifically defined otherwise in another portion of this Code of Ordinances or unless such construction would be inconsistent with the manifest intent of the Council or repugnant to the context of the provision:

1. “Alley” means a public right-of-way, other than a street, affording secondary means of access to abutting property.
2. “City” means the City of Garnavillo, Iowa.
3. “Clerk” means the City Administrator/Clerk of Garnavillo, Iowa.
4. “Code” means the specific chapter of this Code of Ordinances in which a specific subject is covered and bears a descriptive title word (such as the Building Code and/or a standard code adopted by reference).
7. “County” means Clayton County, Iowa.
8. “May” confers a power.
9. “Measure” means an ordinance, amendment, resolution or motion.
10. “Must” states a requirement.
11. “Occupant” or “tenant,” applied to a building or land, includes any person who occupies the whole or a part of such building or land, whether alone or with others.
12. “Ordinances” means the ordinances of the City of Garnavillo, Iowa, as embodied in this Code of Ordinances, ordinances not repealed by the ordinance adopting this Code of Ordinances, and those enacted hereafter.
13. “Person” means an individual, firm, partnership, domestic or foreign corporation, company, association or joint stock association, trust or other legal entity,
and includes a trustee, receiver, assignee, or similar representative thereof, but does not include a governmental body.
14. “Public way” includes any street, alley, boulevard, parkway, highway, sidewalk, or other public thoroughfare.
15. “Shall” imposes a duty.
16. “Sidewalk” means that surfaced portion of the street between the edge of the traveled way, surfacing, or curb line and the adjacent property line, intended for the use of pedestrians.
17. “State” means the State of Iowa.
19. “Street” or “highway” means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

Words that are not defined in this Code of Ordinances or by the *Code of Iowa* have their ordinary meaning unless such construction would be inconsistent with the manifest intent of the Council, or repugnant to the context of the provision.

**1.03 CITY POWERS.** The City may, except as expressly limited by the Iowa Constitution, and if not inconsistent with the laws of the Iowa General Assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the City and of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents, and each and every provision of this Code of Ordinances shall be deemed to be in the exercise of the foregoing powers and the performance of the foregoing functions.

*(Code of Iowa, Sec. 364.1)*

**1.04 INDEMNITY.** The applicant for any permit or license under this Code of Ordinances, by making such application, assumes and agrees to pay for any injury to or death of any person or persons whomsoever, and any loss of or damage to property whatsoever, including all costs and expenses incident thereto, however arising from or related to, directly, indirectly or remotely, the issuance of the permit or license, or the doing of anything thereunder, or the failure of such applicant, or the agents, employees or servants of such applicant, to abide by or comply with any of the provisions of this Code of Ordinances or the terms and conditions of such permit or license, and such applicant, by making such application, forever agrees to indemnify the City and its officers, agents and employees, and agrees to save them harmless from any and all claims, demands, lawsuits or liability whatsoever for any loss, damage, injury or death, including all costs and expenses incident thereto, by reason of the foregoing. The provisions of this section shall be deemed to be a part of any permit or license issued under this Code of Ordinances or any other ordinance of the City whether expressly recited therein or not.

**1.05 PERSONAL INJURIES.** When action is brought against the City for personal injuries alleged to have been caused by its negligence, the City may notify in writing any person by whose negligence it claims the injury was caused. The notice shall state the pendency of the action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that the City believes that the person notified is liable to it for any judgment rendered against the City, and asking the person to appear and defend. A judgment obtained in the suit is conclusive in
any action by the City against any person so notified, as to the existence of the defect or other cause of the injury or damage, as to the liability of the City to the plaintiff in the first named action, and as to the amount of the damage or injury. The City may maintain an action against the person notified to recover the amount of the judgment together with all the expenses incurred by the City in the suit.

(Code of Iowa, Sec. 364.14)

1.06 RULES OF CONSTRUCTION. In the construction of this Code of Ordinances, the rules of statutory construction as set forth in Chapter 4 of the Code of Iowa shall be utilized to ascertain the intent of the Council with the understanding that the term “statute” as used therein will be deemed to be synonymous with the term “ordinance” when applied to this Code of Ordinances.

1.07 EXTENSION OF AUTHORITY. Whenever an officer or employee is required or authorized to do an act by a provision of this Code of Ordinances, the provision shall be construed as authorizing performance by a regular assistant, subordinate or a duly authorized designee of said officer or employee.

1.08 AMENDMENTS. All ordinances which amend, repeal or in any manner affect this Code of Ordinances shall include proper reference to chapter, section, subsection, or paragraph to maintain an orderly codification of ordinances of the City.

(Code of Iowa, Sec. 380.2)

1.09 CATCHLINES AND NOTES. The catchlines of the several sections of the Code of Ordinances, titles, headings (chapter, section and subsection), editor’s notes, cross references and State law references, unless set out in the body of the section itself, contained in the Code of Ordinances, do not constitute any part of the law, and are intended merely to indicate, explain, supplement or clarify the contents of a section.

1.10 ALTERING CODE. It is unlawful for any unauthorized person to change or amend by additions or deletions, any part or portion of the Code of Ordinances, or to insert or delete pages, or portions thereof, or to alter or tamper with the Code of Ordinances in any manner whatsoever which will cause the law of the City to be misrepresented thereby.

(Code of Iowa, Sec. 718.5)

1.11 SEVERABILITY. If any section, provision, or part of the Code of Ordinances is adjudged invalid or unconstitutional, such adjudication will not affect the validity of the Code of Ordinances as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

1.12 WARRANTS. If consent to enter upon or inspect any building, structure or property pursuant to a municipal ordinance is withheld by any person having the lawful right to exclude, the City officer or employee having the duty to enter upon or conduct the inspection may apply to the Iowa District Court in and for the County, pursuant to Section 808.14 of the Code of Iowa, for an administrative search warrant. No owner, operator or occupant or any other person having charge, care, or control of any dwelling unit, rooming unit, structure, building, or premises shall fail or neglect, after presentation of a search warrant, to permit entry therein by the municipal officer or employee.

1.13 GENERAL STANDARDS FOR ACTION. Whenever this Code of Ordinances grants any discretionary power to the Council or any commission, board or officer or
employee of the City and does not specify standards to govern the exercise of the power, the power shall be exercised in light of the following standard: The discretionary power to grant, deny, or revoke any matter shall be considered in light of the facts and circumstances then existing and as may be reasonably foreseeable, and due consideration shall be given to the impact upon the public health, safety and welfare, and the decision shall be that of a reasonably prudent person under similar circumstances in the exercise of the police power.

1.14 STANDARD PENALTY. Unless another penalty is expressly provided by this Code of Ordinances for violation of any particular provision, section or chapter, any person failing to perform a duty required by this Code of Ordinances or otherwise violating any provision of this Code of Ordinances or any rule or regulation adopted herein by reference shall, upon conviction, be subject to a fine of at least sixty-five dollars ($65.00) but not to exceed six hundred twenty-five dollars ($625.00). The court may order imprisonment not to exceed thirty (30) days in lieu of a fine or in addition to a fine.

(Code of Iowa, Sec. 364.3[2] and 903.1[1a])

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CHAPTER 2
CHARTER

2.01  Title
This chapter may be cited as the charter of the City of Garnavillo, Iowa.

2.02  Form of Government.
The form of government of the City is the Mayor-Council form of government.

(Code of Iowa, Sec. 372.4)

2.03  Powers and Duties of City Officers.
The Council and Mayor and other City officers have such powers and shall perform such duties as are authorized or required by State law and by the ordinances, resolutions, rules and regulations of the City.

2.04  Number and Term of Council.
The Council consists of five (5) Council Members elected at large for overlapping terms of four (4) years.

(Code of Iowa, Sec. 376.2)

2.05  Term of Mayor.
The Mayor is elected for a term of four (4) years.

(Code of Iowa, Sec. 376.2)

2.06  Copies on File.
The Clerk shall keep an official copy of the charter on file with the official records of the Clerk and the Secretary of State, and shall keep copies of the charter available at the Clerk’s office for public inspection.

(Code of Iowa, Sec. 372.1)

EDITOR’S NOTE
Ordinance No. 73-2, adopting a charter for the City, was passed and approved by the Council on December 17, 1973, and published in the Guttenberg Press, Guttenberg, Iowa, on December 26, 1973. Pursuant to an election held September 27, 1977, the terms of office of the Mayor and Council members were extended to four (4) years.
CHAPTER 3

MUNICIPAL INFRACTIONS

3.01 MUNICIPAL INFRACTION. A violation of this Code of Ordinances or any ordinance or code herein adopted by reference or the omission or failure to perform any act or duty required by the same, with the exception of those provisions specifically provided under State law as a felony, an aggravated misdemeanor, or a serious misdemeanor, or a simple misdemeanor under Chapters 687 through 747 of the Code of Iowa, is a municipal infraction punishable by civil penalty as provided herein.

(Code of Iowa, Sec. 364.22[3])

3.02 ENVIRONMENTAL VIOLATION. A municipal infraction which is a violation of Chapter 455B of the Code of Iowa or of a standard established by the City in consultation with the Department of Natural Resources, or both, may be classified as an environmental violation. However, the provisions of this section shall not be applicable until the City has offered to participate in informal negotiations regarding the violation or to the following specific violations:

(Code of Iowa, Sec. 364.22[1])

1. A violation arising from noncompliance with a pretreatment standard or requirement referred to in 40 C.F.R. §403.8.

2. The discharge of airborne residue from grain, created by the handling, drying or storing of grain, by a person not engaged in the industrial production or manufacturing of grain products.

3. The discharge of airborne residue from grain, created by the handling, drying or storing of grain, by a person engaged in such industrial production or manufacturing if such discharge occurs from September 15 to January 15.

3.03 PENALTIES. A municipal infraction is punishable by the following civil penalties:

(Code of Iowa, Sec. 364.22[1])

1. Standard Civil Penalties.
   A. First offense – not to exceed $750.00
   B. Each repeat offense – not to exceed $1,000.00

Each day that a violation occurs or is permitted to exist constitutes a repeat offense.

2. Special Civil Penalties.
   A. A municipal infraction arising from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. §403.8, by an industrial user is punishable by a penalty of not more than $1,000.00 for each day a violation exists or continues.
B. A municipal infraction classified as an environmental violation is punishable by a penalty of not more than $1,000.00 for each occurrence. However, an environmental violation is not subject to such penalty if all of the following conditions are satisfied:

1. The violation results solely from conducting an initial startup, cleaning, repairing, performing scheduled maintenance, testing, or conducting a shutdown of either equipment causing the violation or the equipment designed to reduce or eliminate the violation.
2. The City is notified of the violation within twenty-four (24) hours from the time that the violation begins.
3. The violation does not continue in existence for more than eight (8) hours.

3.04 CIVIL CITATIONS. Any officer authorized by the City to enforce this Code of Ordinances may issue a civil citation to a person who commits a municipal infraction. A copy of the citation may be served by personal service as provided in Rule of Civil Procedure 1.305, by certified mail addressed to the defendant at defendant’s last known mailing address, return receipt requested, or by publication in the manner as provided in Rule of Civil Procedure 1.310 and subject to the conditions of Rule of Civil Procedure 1.311. A copy of the citation shall be retained by the issuing officer, and the original citation shall be sent to the Clerk of the District Court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

(Code of Iowa, Sec. 364.22[4])

1. The name and address of the defendant.
2. The name or description of the infraction attested to by the officer issuing the citation.
3. The location and time of the infraction.
4. The amount of civil penalty to be assessed or the alternative relief sought, or both.
5. The manner, location, and time in which the penalty may be paid.
6. The time and place of court appearance.
8. The legal description of the affected real property, if applicable.

If the citation affects real property and charges a violation relating to the condition of the property, including a building code violation, a local housing regulation violation, a housing code violation, or a public health or safety violation, after filing the citation with the Clerk of the District Court, the City shall also file the citation in the office of the County Treasurer.

(Ord. 04-2010 – Oct. 10 Supp.)

3.05 ALTERNATIVE RELIEF. Seeking a civil penalty as authorized in this chapter does not preclude the City from seeking alternative relief from the court in the same action. Such alternative relief may include, but is not limited to, an order for abatement or injunctive relief.

(Code of Iowa, Sec. 364.22 [8])
3.06 CRIMINAL PENALTIES. This chapter does not preclude a peace officer from issuing a criminal citation for a violation of this Code of Ordinances or regulation if criminal penalties are also provided for the violation. Nor does it preclude or limit the authority of the City to enforce the provisions of this Code of Ordinances by criminal sanctions or other lawful means.

(Code of Iowa, Sec. 364.22[11])

3.07 ADMINISTRATIVE PENALTY – NOTICE OF VIOLATION. Municipal Infractions may be initially brought upon simple notice of violation and if the person charged admits the violation, upon payment of the penalty to the City and the performance of any other act required by law to be performed, such person shall not be further prosecuted or assessed any costs or other expenses for such violation, and the City shall retain all penalties thus collected. Where a municipal infraction is not admitted upon simple notice by the person charged or where the person charged fails to perform any other act required to be performed, or both, a civil citation seeking a penalty for a municipal infraction, with or without additional relief, may be initially filed in the court. This section does not impose a duty to initially charge all municipal infractions upon simple notice of violation. All administrative penalties fees shall be set by council resolution.

(Ord. 18-2012 – Nov. 14 Supp.)
CHAPTER 5
OPERATING PROCEDURES

5.01 OATHS. The oath of office shall be required and administered in accordance with the following:

1. Qualify for Office. Each elected or appointed officer shall qualify for office by taking the prescribed oath and by giving, when required, a bond. The oath shall be taken, and bond provided, after being certified as elected, no later than noon of the first day which is not a Sunday or a legal holiday in January of the first year of the term for which the officer was elected.

(Code of Iowa, Sec. 63.1)

2. Prescribed Oath. The prescribed oath is: “I, (name), do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all duties of the office of (name of office) in Garnavillo as now or hereafter required by law.”

(Code of Iowa, Sec. 63.10)

3. Officers Empowered to Administer Oaths. The following are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective office:

A. Mayor
B. City Administrator/Clerk
C. Members of all boards, commissions or bodies created by law.

(Code of Iowa, Sec. 63A.2)

5.02 BONDS. Surety bonds are provided in accordance with the following:

1. Required. The Council shall provide by resolution for a surety bond or blanket position bond running to the City and covering the Mayor, Clerk, Treasurer and such other officers and employees as may be necessary and advisable.

(Code of Iowa, Sec. 64.13)

2. Bonds Approved. Bonds shall be approved by the Council.

(Code of Iowa, Sec. 64.19)

3. Bonds Filed. All bonds, after approval and proper record, shall be filed with the Clerk.

(Code of Iowa, Sec. 64.23[6])
4. Record. The Clerk shall keep a book, to be known as the “Record of Official Bonds” in which shall be recorded the official bonds of all City officers, elective or appointive.

(Code of Iowa, Sec. 64.24[3])

5.03 DUTIES: GENERAL. Each municipal officer shall exercise the powers and perform the duties prescribed by law and this Code of Ordinances, or as otherwise directed by the Council unless contrary to State law or City charter.

(Code of Iowa, Sec. 372.13[4])

5.04 BOOKS AND RECORDS. All books and records required to be kept by law or ordinance shall be open to examination by the public upon request, unless some other provisions of law expressly limit such right or require such records to be kept confidential. Access to public records which are combined with data processing software shall be in accordance with policies and procedures established by the City.

(Code of Iowa, Sec. 22.2 & 22.3A)

5.05 TRANSFER TO SUCCESSOR. Each officer shall transfer to his or her successor in office all books, papers, records, documents and property in the officer’s custody and appertaining to that office.

(Code of Iowa, Sec. 372.13[4])

5.06 MEETINGS. All meetings of the Council, any board or commission, or any multi-membered body formally and directly created by any of the foregoing bodies shall be held in accordance with the following:

1. Notice of Meetings. Reasonable notice, as defined by State law, of the time, date and place of each meeting, and its tentative agenda shall be given.

(Code of Iowa, Sec. 21.4)

2. Meetings Open. All meetings shall be held in open session unless closed sessions are held as expressly permitted by State law.

(Code of Iowa, Sec. 21.3)

3. Minutes. Minutes shall be kept of all meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

(Code of Iowa, Sec. 21.3)

4. Closed Session. A closed session may be held only by affirmative vote of either two-thirds of the body or all of the members present at the meeting and in accordance with Chapter 21 of the Code of Iowa.

(Code of Iowa, Sec. 21.5)

5. Cameras and Recorders. The public may use cameras or recording devices at any open session.

(Code of Iowa, Sec. 21.7)

6. Electronic Meetings. A meeting may be conducted by electronic means only in circumstances where such a meeting in person is impossible or impractical and then only in compliance with the provisions of Chapter 21 of the Code of Iowa.

(Code of Iowa, Sec. 21.8)
5.07 CONFLICT OF INTEREST. A City officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the City, unless expressly permitted by law. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

(Code of Iowa, Sec. 362.5)

1. Compensation of Officers. The payment of lawful compensation of a City officer or employee holding more than one City office or position, the holding of which is not incompatible with another public office or is not prohibited by law.

(Code of Iowa, Sec. 362.5[1])

2. Investment of Funds. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

(Code of Iowa, Sec. 362.5[2])

3. City Treasurer. An employee of a bank or trust company, who serves as Treasurer of the City.

(Code of Iowa, Sec. 362.5[3])

4. Stock Interests. Contracts in which a City officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 8 of this section, or both, if the contracts are made by competitive bid in writing, publicly invited and opened, or if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

(Code of Iowa, Sec. 362.5[5])

5. Newspaper. The designation of an official newspaper.

(Code of Iowa, Sec. 362.5[6])

6. Existing Contracts. A contract in which a City officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract may not be renewed.

(Code of Iowa, Sec. 362.5[7])

7. Volunteers. Contracts with volunteer firefighters or civil defense volunteers.

(Code of Iowa, Sec. 362.5[8])

8. Corporations. A contract with a corporation in which a City officer or employee has an interest by reason of stock holdings when less than five percent (5%) of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of such officer or employee.

(Code of Iowa, Sec. 362.5[9])

9. Contracts. Contracts made by the City upon competitive bid in writing, publicly invited and opened.

(Code of Iowa, Sec. 362.5[4])

10. Cumulative Purchases. Contracts not otherwise permitted by this section, for the purchase of goods or services which benefit a City officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of twenty-five hundred dollars ($2500.00) in a fiscal year.

(Code of Iowa, Sec. 362.5[11])
11. Franchise Agreements. Franchise agreements between the City and a utility and contracts entered into by the City for the provision of essential City utility services.

   (Code of Iowa, Sec. 362.5[12])

12. Third Party Contracts. A contract that is a bond, note or other obligation of the City and the contract is not acquired directly from the City but is acquired in a transaction with a third party who may or may not be the original underwriter, purchaser, or obligee of the contract.

   (Code of Iowa, Sec. 362.5[13])

5.08 RESIGNATIONS. An elected officer who wishes to resign may do so by submitting a resignation in writing to the Clerk so that it shall be properly recorded and considered. A person who resigns from an elective office is not eligible for appointment to the same office during the time for which the person was elected, if during that time the compensation of the office has been increased.

   (Code of Iowa, Sec. 372.13[9])

5.09 REMOVAL OF APPOINTED OFFICERS AND EMPLOYEES. Except as otherwise provided by State or City law, all persons appointed to City office or employment may be removed by the officer or body making the appointment, but every such removal shall be by written order. The order shall give the reasons, be filed in the office of the Clerk, and a copy shall be sent by certified mail to the person removed, who, upon request filed with the Clerk within thirty (30) days after the date of mailing the copy, shall be granted a public hearing before the Council on all issues connected with the removal. The hearing shall be held within thirty (30) days after the date the request is filed, unless the person removed requests a later date.

   (Code of Iowa, Sec. 372.15)

5.10 VACANCIES. A vacancy in an elective City office during a term of office shall be filled, at the Council’s option, by one of the two following procedures:

   (Code of Iowa, Sec. 372.13[2])

   1. Appointment. By appointment, following public notice, by the remaining members of the Council. The appointment shall be made within sixty (60) days after the vacancy occurs and shall be for the period until the next regular City election unless there is an intervening special election for the City, in which event the election for the office shall be placed on the ballot at such special election. If the Council chooses to proceed under this subsection, the Council shall publish notice of the appointment in accordance with Section 372.13 of the Code of Iowa. If the remaining members do not constitute a quorum of the full membership, or if a petition is filed requesting an election, the Council shall call a special election as provided by law.

      (Code of Iowa, Sec. 372.13[2a])

   2. Special Election. By a special election held to fill the office for the remaining balance of the unexpired term as provided by law.

      (Code of Iowa, Sec. 372.13[2b])

   (Ord. 10-2014 – Nov. 14 Supp.)

5.11 GIFTS. Except as otherwise provided in Chapter 68B of the Code of Iowa, a public official, public employee or candidate, or that person’s immediate family member, shall not, directly or indirectly, accept or receive any gift or series of gifts from a “restricted donor” as
defined in Chapter 68B and a restricted donor shall not, directly or indirectly, individually or jointly with one or more other restricted donors, offer or make a gift or a series of gifts to a public official, public employee or candidate.

(Code of Iowa, Sec. 68B.22)
CHAPTER 6
CITY ELECTIONS

6.01 NOMINATING METHOD TO BE USED. All candidates for elective municipal offices shall be nominated under the provisions of Chapter 45 of the Code of Iowa.  
(Code of Iowa, Sec. 376.3)

6.02 NOMINATIONS BY PETITION. Nominations for elective municipal offices of the City may be made by nomination paper or papers signed by not less than ten (10) eligible electors, residents of the City.  
(Code of Iowa, Sec. 45.1)

6.03 ADDING NAME BY PETITION. The name of a candidate placed upon the ballot by any other method than by petition shall not be added by petition for the same office.  
(Code of Iowa, Sec. 45.2)

6.04 PREPARATION OF PETITION AND AFFIDAVIT. Nomination papers shall include a petition and an affidavit of candidacy. The petition and affidavit shall be substantially in the form prescribed by the State Commissioner of Elections, shall include information required by the Code of Iowa, and shall be signed in accordance with the Code of Iowa.  
(Code of Iowa, Sec. 45.3, 45.5 & 45.6)

6.05 FILING, PRESUMPTION, WITHDRAWALS, OBJECTIONS. The time and place of filing nomination petitions, the presumption of validity thereof, the right of a candidate so nominated to withdraw and the effect of such withdrawal, and the right to object to the legal sufficiency of such petitions, or to the eligibility of the candidate, shall be governed by the appropriate provisions of Chapter 44 of the Code of Iowa.  
(Code of Iowa, Sec. 45.4)

6.06 PERSONS ELECTED. The candidates who receive the greatest number of votes for each office on the ballot are elected, to the extent necessary to fill the positions open.  
(Code of Iowa, Sec. 376.8[3])
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CHAPTER 7
FISCAL MANAGEMENT

7.01 Purpose. The purpose of this chapter is to establish policies and provide for rules and regulations governing the management of the financial affairs of the City.

7.02 Finance Officer. The Administrator/Clerk is the finance and accounting officer of the City and is responsible for the administration of the provisions of this chapter.

7.03 Cash Control. To assure the proper accounting and safe custody of moneys the following shall apply:

1. Deposit of Funds. All moneys or fees collected for any purpose by any City officer shall be deposited through the office of the finance officer. If any said fees are due to an officer, they shall be paid to the officer by check drawn by the finance officer and approved by the Council only upon such officer’s making adequate reports relating thereto as required by law, ordinance or Council directive.

2. Deposits and Investments. All moneys belonging to the City shall be promptly deposited in depositories selected by the Council in amounts not exceeding the authorized depository limitation established by the Council or invested in accordance with the City’s written investment policy and State law, including joint investments as authorized by Section 384.21 of the Code of Iowa.

   (Code of Iowa, Sec. 384.21, 12B.10, 12C.1)

7.04 Fund Control. There shall be established and maintained separate and distinct funds in accordance with the following:

1. Revenues. All moneys received by the City shall be credited to the proper fund as required by law, ordinance or resolution.

2. Expenditures. No disbursement shall be made from a fund unless such disbursement is authorized by law, ordinance or resolution, was properly budgeted, and supported by a claim approved by the Council.

3. Emergency Fund. No transfer may be made from any fund to the Emergency Fund.

   (IAC, 545-2.5 [384,388], Sec. 2.5[2])

4. Debt Service Fund. Except where specifically prohibited by State law, moneys may be transferred from any other City fund to the Debt Service Fund to meet payments of principal and interest. Such transfers must be authorized by the original budget or a budget amendment.

   (IAC, 545-2.5[384,388] Sec. 2.5[3])

5. Capital Improvements Reserve Fund. Except where specifically prohibited by State law, moneys may be transferred from any City fund to the Capital Improvements Reserve Fund.

   (IAC, 545-2.5[384,388] Sec. 2.5[4])

7.05 Operating Budget Preparation
7.06 Budget Amendments
7.07 Accounting
7.08 Financial Reports
Reserve Fund. Such transfers must be authorized by the original budget or a budget amendment.

(IAC, 545-2.5[384,388] Sec. 2.5[4])

6. Utility and Enterprise Funds. A surplus in a Utility or Enterprise Fund may be transferred to any other City fund, except the Emergency Fund and Road Use Tax Funds, by resolution of the Council. A surplus may exist only after all required transfers have been made to any restricted accounts in accordance with the terms and provisions of any revenue bonds or loan agreements relating to the Utility or Enterprise Fund. A surplus is defined as the cash balance in the operating account or the unrestricted retained earnings calculated in accordance with generally accepted accounting principles in excess of:

A. The amount of the expense of disbursements for operating and maintaining the utility or enterprise for the preceding three (3) months, and

B. The amount necessary to make all required transfers to restricted accounts for the succeeding three (3) months.

(IAC, 545-2.5[384,388], Sec. 2.5[5])

7. Balancing of Funds. Fund accounts shall be reconciled at the close of each month and a report thereof submitted to the Council.

7.05 OPERATING BUDGET PREPARATION. The annual operating budget of the City shall be prepared in accordance with the following:

1. Proposal Prepared. The finance officer is responsible for preparation of the annual budget detail, for review by the Mayor and Council and adoption by the Council in accordance with directives of the Mayor and Council.

2. Boards and Commissions. All boards, commissions and other administrative agencies of the City that are authorized to prepare and administer budgets must submit their budget proposals to the finance officer for inclusion in the proposed City budget at such time and in such form as required by the Council.

3. Submission to Council. The finance officer shall submit the completed budget proposal to the Council no later than February 15 of each year.

4. Council Review. The Council shall review the proposed budget and may make any adjustments in the budget which it deems appropriate before accepting such proposal for publication, hearing and final adoption.

5. Notice of Hearing. Upon adopting a proposed budget the Council shall set a date for public hearing thereon to be held before March 15 and cause notice of such hearing and a summary of the proposed budget to be published not less than ten (10) or more than twenty (20) days before the date established for the hearing. Proof of such publication must be filed with the County Auditor.

(Code of Iowa, Sec. 384.16[3])

6. Copies of Budget on File. Not less than twenty (20) days before the date that the budget must be certified to the County Auditor and not less than ten (10) days before the public hearing, the Clerk shall make available a sufficient number of copies of the detailed budget to meet the requests of taxpayers and organizations, and have them available for distribution at the offices of the Mayor and Clerk and at the City library.

(Code of Iowa, Sec. 384.16[2])
7. Adoption and Certification. After the hearing, the Council shall adopt, by resolution, a budget for at least the next fiscal year and the Clerk shall certify the necessary tax levy for the next fiscal year to the County Auditor and the County Board of Supervisors. The tax levy certified may be less than, but not more than, the amount estimated in the proposed budget. Two copies each of the detailed budget as adopted and of the tax certificate must be transmitted to the County Auditor.

(Code of Iowa, Sec. 384.16[5])

7.06 BUDGET AMENDMENTS. A City budget finally adopted for the following fiscal year becomes effective July 1 and constitutes the City appropriation for each program and purpose specified therein until amended as provided by this section.

(Code of Iowa, Sec. 384.18)

1. Program Increase. Any increase in the amount appropriated to a program must be prepared, adopted and subject to protest in the same manner as the original budget.

(IAC, 545-2.2 [384, 388])

2. Program Transfer. Any transfer of appropriation from one program to another must be prepared, adopted and subject to protest in the same manner as the original budget.

(IAC, 545-2.3 [384, 388])

3. Activity Transfer. Any transfer of appropriation from one activity to another activity within a program must be approved by resolution of the Council.

(IAC, 545-2.4 [384, 388])

4. Administrative Transfers. The finance officer shall have the authority to adjust, by transfer or otherwise, the appropriations allocated within a specific activity without prior Council approval.

(IAC, 545-2.4 [384, 388])

7.07 ACCOUNTING. The accounting records of the City shall consist of not less than the following:

1. Books of Original Entry. There shall be established and maintained books of original entry to provide a chronological record of cash received and disbursed.

2. General Ledger. There shall be established and maintained a general ledger controlling all cash transactions, budgetary accounts and for recording unappropriated surpluses.

3. Checks. Checks shall be prenumbered and signed by the Clerk and Mayor following Council approval, except as provided by subsection 5 hereof.

4. Budget Accounts. There shall be established such individual accounts to record receipts by source and expenditures by program and activity as will provide adequate information and control for budgeting purposes as planned and approved by the Council. Each individual account shall be maintained within its proper fund and so kept that receipts can be immediately and directly compared with revenue estimates and expenditures can be related to the authorizing appropriation. No expenditure shall be posted except to the appropriation for the function and purpose for which the expense was incurred.

5. Immediate Payment Authorized. The Council may by resolution authorize the Clerk to issue checks for immediate payment of amounts due, which if not paid
promptly would result in loss of discount, penalty for late payment or additional interest cost. Any such payments made shall be reported to the Council for review and approval with and in the same manner as other claims at the next meeting following such payment. The resolution authorizing immediate payment shall specify the type of payment so authorized and may include but is not limited to payment of utility bills, contractual obligations, payroll and bond principal and interest.

6. Utilities. The finance officer shall perform and be responsible for accounting functions of the municipally owned utilities.

7.08 FINANCIAL REPORTS. The finance officer shall prepare and file the following financial reports:

1. Monthly Reports. There shall be submitted to the Council each month a report showing the activity and status of each fund.

2. Annual Report. Not later than December 1 of each year there shall be published an annual report containing a summary for the preceding fiscal year of all collections and receipts, all accounts due the City, and all expenditures, the current public debt of the City, and the legal debt limit of the City for the current fiscal year. A copy of the annual report must be filed with the Auditor of State not later than December 1 of each year.

(Code of Iowa, Sec. 384.22)
CHAPTER 8
URBAN RENEWAL

EDITOR'S NOTE

The following ordinances not codified herein, and specifically saved from repeal, have been adopted establishing Urban Renewal Areas in the City and remain in full force and effect.

<table>
<thead>
<tr>
<th>ORDINANCE NO.</th>
<th>ADOPTED</th>
<th>NAME OF AREA</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-90</td>
<td>October 8, 1990</td>
<td>Garnavillo Urban Renewal Area</td>
</tr>
<tr>
<td>6-94</td>
<td>August 1, 1994</td>
<td>1994 Addition to the Garnavillo Urban Renewal Area</td>
</tr>
<tr>
<td>06-2013</td>
<td>October 12, 2013</td>
<td>2013 Addition to the Garnavillo Urban Renewal Area</td>
</tr>
</tbody>
</table>
CHAPTER 9

URBAN REVITALIZATION

9.01 Purpose. The purpose of this chapter is to encourage the rehabilitation and redevelopment of the residential, business, and industrial areas of the City.

9.02 Description. In accordance with Chapter 404 of the Code of Iowa, the following described real estate is hereby included in the revitalization area:

All parcels within the corporate limits of the City, except the area of the City designated as an Urban Renewal (TIF) Area which falls within the Garnavillo Industrial Park.

9.03 Applicable Term. The real estate included in the revitalization area shall remain a designated revitalization area for a period of ten years from July 1, 2009.

9.04 Tax Exemption Schedules. All qualified real estate is eligible to receive a partial exemption from taxation on the actual value added by the improvements. The amount of the partial exemption is equal to a percentage of the actual value added by the improvements, determined as follows:

1. For the first year, 80%;
2. For the second year, 70%;
3. For the third year, 60%;
4. For the fourth year, 50%;
5. For the fifth year, 40%;
6. For the sixth year, 40%;
7. For the seventh year, 30%;
8. For the eighth year, 30%;
9. For the ninth year, 20%;
10. For the tenth year, 20%.
[The next page is 71]
CHAPTER 15

MAYOR

15.01 TERM OF OFFICE. The Mayor is elected for a term of four (4) years.

(Code of Iowa, Sec. 376.2)

15.02 POWERS AND DUTIES. The powers and duties of the Mayor are as follows:

1. Chief Executive Officer. Act as the chief executive officer of the City and presiding officer of the Council, supervise all departments of the City, give direction to department heads concerning the functions of the departments, and have the power to examine all functions of the municipal departments, their records and to call for special reports from department heads at any time.

(Code of Iowa, Sec. 372.14[1])

2. Proclamation of Emergency. Have authority to take command of the police and govern the City by proclamation, upon making a determination that a time of emergency or public danger exists. Within the City limits, the Mayor has all the powers conferred upon the Sheriff to suppress disorders.

(Code of Iowa, Sec. 372.14[2])

3. Special Meetings. Call special meetings of the Council when the Mayor deems such meetings necessary to the interests of the City.

(Code of Iowa, Sec. 372.14[1])

4. Mayor’s Veto. Sign, veto or take no action on an ordinance, amendment or resolution passed by the Council. The Mayor may veto an ordinance, amendment or resolution within 14 days after passage. The Mayor shall explain the reasons for the veto in a written message to the Council at the time of the veto.

(Code of Iowa, Sec. 380.5 & 380.6[2])

5. Reports to Council. Make such oral or written reports to the Council as required. These reports shall concern municipal affairs generally, the municipal departments, and recommendations suitable for Council action.

6. Negotiations. Represent the City in all negotiations properly entered into in accordance with law or ordinance. The Mayor shall not represent the City where this duty is specifically delegated to another officer by law, ordinance, or Council direction.

7. Contracts. Whenever authorized by the Council, sign contracts on behalf of the City.

8. Professional Services. Upon order of the Council, secure for the City such specialized and professional services not already available to the City. In executing the order of the Council, the Mayor shall act in accordance with the Code of Ordinances and the laws of the State.
9. **Licenses and Permits.** Sign all licenses and permits which have been granted by the Council, except those designated by law or ordinance to be issued by another municipal officer.

10. **Nuisances.** Issue written order for removal, at public expense, any nuisance for which no person can be found responsible and liable.

11. **Absentee Officer.** Make appropriate provision that duties of any absentee officer be carried on during such absence.

**15.03 APPOINTMENTS.** The Mayor shall appoint the following officials:

(Code of Iowa, Sec. 372.4)

1. **Mayor Pro Tem**
2. **Police Chief**
3. **Library Board of Trustees**
4. **Zoning Board of Adjustment**

**15.04 COMPENSATION.** The salary of the Mayor is two thousand dollars ($2,000.00) per year, payable in two equal installments on January 1 and July 1.

(Code of Iowa, Sec. 372.13[8])

**15.05 VOTING.** The Mayor is not a member of the Council and shall not vote as a member of the Council.

(Code of Iowa, Sec. 372.4)
CHAPTER 16

MAYOR PRO TEM

16.01 VICE PRESIDENT OF COUNCIL. The Mayor shall appoint a member of the Council as Mayor Pro Tem, who shall serve as vice president of the Council.  
(Code of Iowa, Sec. 372.14[3])

16.02 POWERS AND DUTIES. Except for the limitations otherwise provided herein, the Mayor Pro Tem shall perform the duties of the Mayor in cases of absence or inability of the Mayor to perform such duties. In the exercise of the duties of the office the Mayor Pro Tem shall not have power to appoint, employ, or discharge from employment officers or employees that the Mayor has the power to appoint, employ, or discharge without the approval of the Council.  
(Code of Iowa, Sec. 372.14[3])

16.03 VOTING RIGHTS. The Mayor Pro Tem shall have the right to vote as a member of the Council.  
(Code of Iowa, Sec. 372.14[3])

16.04 COMPENSATION. If the Mayor Pro Tem performs the duties of the Mayor during the Mayor’s absence or disability for a continuous period of fifteen (15) days or more, the Mayor Pro Tem may be paid for that period the compensation as determined by the Council, based upon the Mayor Pro Tem’s performance of the Mayor’s duties and upon the compensation of the Mayor.  
(Code of Iowa, Sec. 372.13[8])
CHAPTER 17
COUNCIL

17.01 NUMBER AND TERM OF COUNCIL. The Council consists of five (5) Council members elected at large for overlapping terms of four (4) years.
(Code of Iowa, Sec. 372.4 & 376.2)

17.02 POWERS AND DUTIES. The powers and duties of the Council include, but are not limited to the following:

1. General. All powers of the City are vested in the Council except as otherwise provided by law or ordinance.
   (Code of Iowa, Sec. 364.2[1])

2. Wards. By ordinance, the Council may divide the City into wards based upon population, change the boundaries of wards, eliminate wards or create new wards.
   (Code of Iowa, Sec. 372.13[7])

3. Fiscal Authority. The Council shall apportion and appropriate all funds, and audit and allow all bills, accounts, payrolls and claims, and order payment thereof. It shall make all assessments for the cost of street improvements, sidewalks, sewers and other work, improvement or repairs which may be specially assessed.
   (Code of Iowa, Sec. 364.2[1], 384.16 & 384.38 [1])

4. Public Improvements. The Council shall make all orders for the construction of any improvements, bridges, or buildings.
   (Code of Iowa, Sec. 364.2[1])

5. Contracts. The Council shall make or authorize the making of all contracts. No contract shall bind or be obligatory upon the City unless approved by the Council.
   (Code of Iowa, Sec. 26.10)

6. Employees. The Council shall authorize, by resolution, the number, duties, term of office and compensation of employees or officers not otherwise provided for by State law or the Code of Ordinances.
   (Code of Iowa, Sec. 372.13[4])

7. Setting Compensation for Elected Officers. By ordinance, the Council shall prescribe the compensation of the Mayor, Council members, and other elected City officers, but a change in the compensation of the Mayor does not become effective during the term in which the change is adopted, and the Council shall not adopt such an ordinance changing the compensation of any elected officer during the months of November and December in the year of a regular City election. A change in the compensation of Council members becomes effective for all Council members at the beginning of the term of the Council members elected at the election next following the change in compensation.
   (Code of Iowa, Sec. 372.13[8])
17.03 EXERCISE OF POWER. The Council shall exercise a power only by the passage of a motion, a resolution, an amendment or an ordinance in the following manner:

(Code of Iowa, Sec. 364.3[1])

1. Action by Council. Passage of an ordinance, amendment, or resolution requires a majority vote of all of the members of the Council. Passage of a motion requires a majority vote of a quorum of the Council. A resolution must be passed to spend public funds in excess of one hundred thousand dollars ($100,000.00) on a public improvement project, or to accept public improvements and facilities upon their completion. Each Council member’s vote on a measure must be recorded. A measure which fails to receive sufficient votes for passage shall be considered defeated.

(Code of Iowa, Sec. 380.4)

2. Overriding Mayor’s Veto. Within thirty (30) days after the Mayor’s veto, the Council may pass the measure again by a vote of not less than two-thirds of all of the members of the Council.

(Code of Iowa, Sec. 380.6[2])

3. Measures Become Effective. Measures passed by the Council become effective in one of the following ways:

A. An ordinance or amendment signed by the Mayor becomes effective when the ordinance or a summary of the ordinance is published, unless a subsequent effective date is provided within the ordinance or amendment.

(Code of Iowa, Sec. 380.6[1a])

B. A resolution signed by the Mayor becomes effective immediately upon signing.

(Code of Iowa, Sec. 380.6[1b])

C. A motion becomes effective immediately upon passage of the motion by the Council.

(Code of Iowa, Sec. 380.6[1c])

D. If the Mayor vetoes an ordinance, amendment or resolution and the Council repasses the measure after the Mayor’s veto, a resolution becomes effective immediately upon repassage, and an ordinance or amendment becomes a law when the ordinance or a summary of the ordinance is published, unless a subsequent effective date is provided within the ordinance or amendment.

(Code of Iowa, Sec. 380.6[2])

E. If the Mayor takes no action on an ordinance, amendment or resolution, a resolution becomes effective fourteen (14) days after the date of passage, and an ordinance or amendment becomes law when the ordinance or a summary of the ordinance is published, but not sooner than fourteen (14) days after the date of passage, unless a subsequent effective date is provided within the ordinance or amendment.

(Code of Iowa, Sec. 380.6[3])

“All of the members of the Council” refers to all of the seats of the Council including a vacant seat and a seat where the member is absent, but does not include a seat where the Council member declines to vote by reason of a conflict of interest.

(Code of Iowa, Sec. 380.4)
17.04 COUNCIL MEETINGS. Procedures for giving notice of meetings of the Council and other provisions regarding the conduct of Council meetings are contained in Section 5.06 of this Code of Ordinances. Additional particulars relating to Council meetings are the following:

1. Regular Meetings. The regular meetings of the Council are on the second Saturday of each month at 8:00 a.m. in the Council Chambers at City Hall. If such day falls on a legal holiday, the meeting is held the next day at the same time or at a mutually agreeable time, as determined by the Council.

2. Special Meetings. Special meetings shall be held upon call of the Mayor or upon the request of a majority of the members of the Council.

   (Code of Iowa, Sec. 372.13[5])

3. Quorum. A majority of all Council members is a quorum.

   (Code of Iowa, Sec. 372.13[1])


   (Code of Iowa, Sec. 372.13[5])

5. Compelling Attendance. Any three members of the Council can compel the attendance of the absent members at any regular, adjourned, or duly called meeting, by serving a written notice upon the absent members to attend at once.

   (Ord. 09-2011 – Sep. 12 Supp.)

17.05 APPOINTMENTS. The Council shall appoint the following officials and prescribe their powers, duties, compensation and term of office:

1. City Administrator/Clerk
2. City Attorney
3. Planning and Zoning Commission

17.06 COMPENSATION. The salary of each Council member is thirty dollars ($30.00) for each meeting of the Council attended, payable semiannually on January 1 and July 1.

   (Code of Iowa, Sec. 372.13[8])
CHAPTER 18

CITY ADMINISTRATOR/CLERK

18.01 Appointment and Compensation. At its first meeting in January following the regular city election the Council shall appoint by majority vote a City Administrator/Clerk to serve for a term of two (2) years. The City Administrator/Clerk shall receive such compensation as established by resolution of the Council.  

(Code of Iowa, Sec. 372.13[3])

18.02 Powers and Duties: General. The City Administrator/Clerk or, in the Administrator/Clerk’s absence or inability to act, the Deputy Clerk has the powers and duties as provided in this chapter, this Code of Ordinances and the law.

18.03 Publication of Minutes. The Administrator/Clerk shall attend all regular and special Council meetings and within fifteen (15) days following a regular or special meeting shall cause the minutes of the proceedings thereof to be published. Such publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claims.

(Code of Iowa, Sec. 372.13[6])

18.04 Recording Measures. The Administrator/Clerk shall promptly record each measure considered by the Council and record a statement with the measure, where applicable, indicating whether the Mayor signed, vetoed or took no action on the measure, and whether the measure was repassed after the Mayor’s veto.

(Code of Iowa, Sec. 380.7[1 & 2])

18.05 Publication. The Administrator/Clerk shall cause to be published all ordinances, enactments, proceedings, and official notices requiring publication as follows:

1. Time. If notice of an election, hearing, or other official action is required by this Code of Ordinances or law, the notice must be published at least once, not less than four (4) or more than twenty (20) days before the date of the election, hearing or other action, unless otherwise provided by law.

(Code of Iowa, Sec. 362.3[1])

2. Manner of Publication. A publication required by this Code of Ordinances or law must be in a newspaper published at least once weekly and having general circulation in the City, except that ordinances and amendments may be published by posting in the following places:

   City Clerk’s Office  
   Post Office  
   Garnavillo Savings Bank
The Administrator/Clerk is hereby directed to post promptly such ordinances and amendments, and to leave them so posted for not less than ten (10) days after the first date of posting. Unauthorized removal of the posted ordinance or amendment prior to the completion of the ten days shall not affect the validity of said ordinance or amendment. The Administrator/Clerk shall note the first date of such posting on the official copy of the ordinance and in the official ordinance book immediately following the ordinance.

(Code of Iowa, Sec. 362.3[2])

18.06 AUTHENTICATION. The Administrator/Clerk shall authenticate all measures except motions with the Administrator/Clerk’s signature, certifying the time and manner of publication when required.

(Code of Iowa, Sec. 380.7[4])

18.07 CERTIFY MEASURES. The Administrator/Clerk shall certify all measures establishing any zoning district, building lines, or fire limits and a plat showing the district, lines, or limits to the recorder of the County containing the affected parts of the City.

(Code of Iowa, Sec. 380.11)

18.08 RECORDS. The Administrator/Clerk shall maintain the specified City records in the following manner:

1. Ordinances and Codes. Maintain copies of all effective City ordinances and codes for public use.

(Code of Iowa, Sec. 380.7[5])

2. Custody. Have custody and be responsible for the safekeeping of all writings or documents in which the City is a party in interest unless otherwise specifically directed by law or ordinance.

(Code of Iowa, Sec. 372.13[4])

3. Maintenance. Maintain all City records and documents, or accurate reproductions, for at least five (5) years except that ordinances, resolutions, Council proceedings, records and documents, or accurate reproductions, relating to the issuance, cancellation, transfer, redemption or replacement of public bonds or obligations shall be kept for at least eleven (11) years following the final maturity of the bonds or obligations. Ordinances, resolutions, Council proceedings, records and documents, or accurate reproductions, relating to real property transactions shall be maintained permanently.

(Code of Iowa, Sec. 372.13[3 & 5])

4. Provide Copy. Furnish upon request to any municipal officer a copy of any record, paper or public document under the Administrator/Clerk’s control when it may be necessary to such officer in the discharge of such officer’s duty; furnish a copy to any citizen when requested upon payment of the fee set by Council resolution; under the direction of the Mayor or other authorized officer, affix the seal of the City to those public documents or instruments which by ordinance and Code of Ordinances are required to be attested by the affixing of the seal.

(Code of Iowa, Sec. 372.13[4 & 5] and 380.7[5])

5. Filing of Communications. Keep and file all communications and petitions directed to the Council or to the City generally. The Administrator/Clerk shall endorse
thereon the action of the Council taken upon matters considered in such communications and petitions.

(Code of Iowa, Sec. 372.13[4])

18.09 ATTENDANCE AT MEETINGS. At the direction of the Council, the Administrator/Clerk shall attend meetings of committees, boards and commissions. The Administrator/Clerk shall record and preserve a correct record of the proceedings of such meetings.

(Code of Iowa, Sec. 372.13[4])

18.10 ISSUE LICENSES AND PERMITS. The Administrator/Clerk shall issue or revoke licenses and permits when authorized by this Code of Ordinances, and keep a record of licenses and permits issued which shall show date of issuance, license or permit number, official receipt number, name of person to whom issued, term of license or permit and purpose for which issued.

(Code of Iowa, Sec. 372.13[4])

18.11 NOTIFY APPOINTEES. The Administrator/Clerk shall inform all persons appointed by the Mayor or Council to offices in the City government of their position and the time at which they shall assume the duties of their office.

(Code of Iowa, Sec. 372.13[4])

18.12 ELECTIONS. The Administrator/Clerk shall perform the duties relating to elections in accordance with Chapter 376 of the Code of Iowa.

(Ord. 10-2014 – Nov. 14 Supp.)

18.13 CITY SEAL. The City seal is in the custody of the Administrator/Clerk and shall be attached by the Administrator/Clerk to all transcripts, orders and certificates which it may be necessary or proper to authenticate. The City seal is circular in form, in the center of which are the words “CLAYTON COUNTY, IOWA” and around the margin of which are the words “SEAL OF THE TOWN OF GARNAVILLO, INCORPORATED NOV. 21, 1907.”
CHAPTER 19

CITY TREASURER

19.01 Appointment. The City Administrator/Clerk is the Treasurer and performs all functions required of the position of Treasurer.

19.02 Compensation. The City Administrator/Clerk receives no additional compensation for performing the duties of the Treasurer.

19.03 Duties of Treasurer. The duties of the Treasurer are as follows:

(Code of Iowa, Sec. 372.13[4])

1. Custody of Funds. Be responsible for the safe custody of all funds of the City in the manner provided by law, and Council direction.

2. Record of Fund. Keep the record of each fund separate.

3. Record Receipts. Keep an accurate record of all money or securities received by the Treasurer on behalf of the City and specify the date, from whom, and for what purpose received.

4. Record Disbursements. Keep an accurate account of all disbursements, money or property, specifying date, to whom, and from what fund paid.

5. Special Assessments. Keep a separate account of all money received by the Treasurer from special assessments.

6. Deposit Funds. Upon receipt of moneys to be held in the Treasurer’s custody and belonging to the City, deposit the same in depositories selected by the Council.

7. Reconciliation. Reconcile depository statements with the Treasurer’s books and certify monthly to the Council the balance of cash and investments of each fund and amounts received and disbursed.

8. Debt Service. Keep a register of all bonds outstanding and record all payments of interest and principal.

9. Other Duties. Perform such other duties as specified by the Council by resolution or ordinance.

19.04 Boards and Commissions. The City Treasurer is the Treasurer of the Library Board of Trustees and pays out all money under control of such board on orders signed by the chair and secretary of such board, but receives no additional compensation for such services.
## CHAPTER 20

### CITY ATTORNEY

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.01</td>
<td>Appointment and Compensation</td>
<td>The Council shall appoint by majority vote a City Attorney to serve for a term of one year. The City Attorney shall receive such compensation as established by the Council. (Code of Iowa, Sec. 372.13[4])</td>
</tr>
<tr>
<td>20.02</td>
<td>Attorney for City</td>
<td>The City Attorney shall act as attorney for the City in all matters affecting the City’s interest and appear on behalf of the City before any court, tribunal, commission or board. The City Attorney shall prosecute or defend all actions and proceedings when so requested by the Mayor or Council. (Code of Iowa, Sec. 372.13[4])</td>
</tr>
<tr>
<td>20.03</td>
<td>Power of Attorney</td>
<td>The City Attorney shall sign the name of the City to all appeal bonds and to all other bonds or papers of any kind that may be essential to the prosecution of any cause in court, and when so signed the City shall be bound upon the same. (Code of Iowa, Sec. 372.13[4])</td>
</tr>
<tr>
<td>20.04</td>
<td>Ordinance Preparation</td>
<td>The City Attorney shall prepare those ordinances which the Council may desire and direct to be prepared and report to the Council upon all such ordinances before their final passage by the Council and publication. (Code of Iowa, Sec. 372.13[4])</td>
</tr>
<tr>
<td>20.05</td>
<td>Review and Comment</td>
<td>The City Attorney shall, upon request, make a report to the Council giving an opinion on all contracts, documents, resolutions, or ordinances submitted to or coming under the City Attorney’s notice. (Code of Iowa, Sec. 372.13[4])</td>
</tr>
<tr>
<td>20.06</td>
<td>Provide Legal Opinion</td>
<td>The City Attorney shall give advice or a written legal opinion on City contracts and all questions of law relating to City matters submitted by the Mayor, Council, Clerk, head of the Public Works Department or Police Chief. (Code of Iowa, Sec. 372.13[4])</td>
</tr>
<tr>
<td>20.07</td>
<td>Attendance at Council Meetings</td>
<td>The City Attorney shall attend meetings of the Council at the request of the Mayor or Council. (Code of Iowa, Sec. 372.13[4])</td>
</tr>
<tr>
<td>20.08</td>
<td>Prepare Documents</td>
<td>The City Attorney shall, upon request, formulate drafts for contracts, forms and other writings which may be required for the use of the City. (Code of Iowa, Sec. 372.13[4])</td>
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[The next page is 101]
CHAPTER 21
LIBRARY BOARD OF TRUSTEES

21.01  PUBLIC LIBRARY.  The public library for the City is known as the Garnavillo Public Library. It is referred to in this chapter as the Library.

21.02  LIBRARY TRUSTEES.  The Board of Trustees of the Library, hereinafter referred to as the Board, consists of three (3) resident members and two (2) nonresident members. All resident members are to be appointed by the Mayor with the approval of the Council. The nonresident members are to be appointed by the Mayor with the approval of the County Board of Supervisors.  
(Ord. 07-2013 – Nov. 14 Supp.)

21.03  QUALIFICATIONS OF TRUSTEES.  All resident members of the Board shall be bona fide citizens and residents of the City. The nonresident members of the Board shall be bona fide citizens and residents of the unincorporated County. Members shall be over the age of eighteen (18) years.

21.04  ORGANIZATION OF THE BOARD.  The organization of the Board shall be as follows:

1.  Term of Office.  All appointments to the Board shall be for six (6) years, except to fill vacancies. Each term shall commence on July first. Appointments shall be made every two (2) years of one-third (1/3) the total number or as near as possible, to stagger the terms.

2.  Vacancies.  The position of any resident Trustee shall be vacated if such member moves permanently from the City. The position of a nonresident Trustee shall be vacated if such member moves permanently from the County or into the City. The position of any Trustee shall be deemed vacated if such member is absent from six (6) consecutive regular meetings of the Board, except in the case of sickness or temporary absence from the City or County. Vacancies in the Board shall be filled in the same manner as an original appointment except that the new Trustee shall fill out the unexpired term for which the appointment is made.

3.  Compensation. Trustees shall receive no compensation for their services.

(Ord. 07-2013 – Nov. 14 Supp.)

21.05  POWERS AND DUTIES.  The Board shall have and exercise the following powers and duties:

1.  Officers.  To meet and elect from its members a President, a Secretary, and such other officers as it deems necessary. The City Treasurer shall serve as Board Treasurer, but shall not be a member of the Board.
2. Physical Plant. To have charge, control and supervision of the Library, its appurtenances, fixtures and rooms containing the same.

3. Charge of Affairs. To direct and control all affairs of the Library.

4. Hiring of Personnel. To employ a librarian, and authorize the librarian to employ such assistants and employees as may be necessary for the proper management of the Library, and fix their compensation; provided, however, that prior to such employment, the compensation of the librarian, assistants and employees shall have been fixed and approved by a majority of the members of the Board voting in favor thereof.

5. Removal of Personnel. To remove the librarian, by a two-thirds vote of the Board, and provide procedures for the removal of the assistants or employees for misdemeanor, incompetence or inattention to duty, subject however, to the provisions of Chapter 35C of the Code of Iowa.

6. Purchases. To select, or authorize the librarian to select, and make purchases of books, pamphlets, magazines, periodicals, papers, maps, journals, other Library materials, furniture, fixtures, stationery and supplies for the Library within budgetary limits set by the Board.

7. Use by Nonresidents. To authorize the use of the Library by nonresidents and to fix charges therefor unless a contract for free service exists.

8. Rules and Regulations. To make and adopt, amend, modify or repeal rules and regulations, not inconsistent with this Code of Ordinances and the law, for the care, use, government and management of the Library and the business of the Board, fixing and enforcing penalties for violations.

9. Expenditures. To have exclusive control of the expenditure of all funds allocated for Library purposes by the Council, and of all moneys available by gift or otherwise for the erection of Library buildings, and of all other moneys belonging to the Library including fines and rentals collected under the rules of the Board.

10. Gifts. To accept gifts of real property, personal property, or mixed property, and devises and bequests, including trust funds; to take the title to said property in the name of the Library; to execute deeds and bills of sale for the conveyance of said property; and to expend the funds received by them from such gifts, for the improvement of the Library.

11. Enforce the Performance of Conditions on Gifts. To enforce the performance of conditions on gifts, donations, devises and bequests accepted by the City by action against the Council. 

(Conference of Iowa, Ch. 661)

12. Record of Proceedings. To keep a record of its proceedings.

13. County Historical Association. To have authority to make agreements with the local County historical association where such exists, and to set apart the necessary room and to care for such articles as may come into the possession of the association. The Trustees are further authorized to purchase necessary receptacles and materials for the preservation and protection of such articles as are in their judgment of a historical and educational nature and pay for the same out of funds allocated for Library purposes.
21.06 CONTRACTING WITH OTHER LIBRARIES. The Board has power to contract with other libraries in accordance with the following:

1. Contracting. The Board may contract with any other boards of trustees of free public libraries, with any other city, school corporation, private or semiprivate organization, institution of higher learning, township, or County, or with the trustees of any County library district for the use of the Library by their respective residents.

   (Code of Iowa, Sec. 392.5 & Ch. 28E)

2. Termination. Such a contract may be terminated at any time by mutual consent of the contracting parties. It also may be terminated by a majority vote of the electors represented by either of the contracting parties. Such a termination proposition shall be submitted to the electors by the governing body of a contracting party on a written petition of not less than five (5) percent in number of the electors who voted for governor in the territory of the contracting party at the last general election. The petition must be presented to the governing body not less than forty (40) days before the election. The proposition may be submitted at any election provided by law that is held in the territory of the party seeking to terminate the contract.

21.07 NONRESIDENT USE. The Board may authorize the use of the Library by persons not residents of the City or County in any one or more of the following ways:

1. Lending. By lending the books or other materials of the Library to nonresidents on the same terms and conditions as to residents of the City, or County, or upon payment of a special nonresident Library fee.

2. Depository. By establishing depositories of Library books or other materials to be loaned to nonresidents.

3. Bookmobiles. By establishing bookmobiles or a traveling library so that books or other Library materials may be loaned to nonresidents.

4. Branch Library. By establishing branch libraries for lending books or other Library materials to nonresidents.

21.08 EXPENDITURES. All money appropriated by the Council for the operation and maintenance of the Library shall be set aside in an account for the Library. Expenditures shall be paid for only on orders of the Board, signed by its President and Secretary. The check-writing officer is the Clerk.

   (Code of Iowa, Sec. 384.20 & 392.5)

21.09 ANNUAL REPORT. The Board shall make a report to the Council immediately after the close of the fiscal year. This report shall contain statements as to the condition of the Library, the number of books added, the number circulated, the amount of fines collected, and the amount of money expended in the maintenance of the Library during the year, together with such further information as may be required by the Council.

21.10 INJURY TO BOOKS OR PROPERTY. It is unlawful for a person willfully, maliciously or wantonly to tear, deface, mutilate, injure or destroy, in whole or in part, any newspaper, periodical, book, map, pamphlet, chart, picture or other property belonging to the Library or reading room.

   (Code of Iowa, Sec. 716.1)
21.11 **THEFT.** No person shall take possession or control of property of the Library with the intent to deprive the Library thereof.

*(Code of Iowa, Sec. 714.1)*

21.12 **NOTICE POSTED.** There shall be posted in clear public view within the Library notices informing the public of the following:

1. Failure To Return. Failure to return Library materials for two (2) months or more after the date the person agreed to return the Library materials, or failure to return Library equipment for one (1) month or more after the date the person agreed to return the Library equipment, is evidence of intent to deprive the owner, provided a reasonable attempt, including the mailing by restricted certified mail of notice that such material or equipment is overdue and criminal actions will be taken, has been made to reclaim the materials or equipment.

*(Code of Iowa, Sec. 714.5)*

2. Detention and Search. Persons concealing Library materials may be detained and searched pursuant to law.

*(Code of Iowa, Sec. 808.12)*
CHAPTER 22

PLANNING AND ZONING COMMISSION

22.01 Planning and Zoning Commission. The City Planning and Zoning Commission, hereinafter referred to as the Commission, consists of five members, appointed by the Council. The Commission members shall be residents of the City and shall not hold any elective office in the City government.

(Code of Iowa, Sec. 414.6 & 392.1)

22.02 Term of Office. The term of office of the members of the Commission shall be five (5) years. The terms of not more than one-third of the members will expire in any one year.

(Code of Iowa, Sec. 392.1)

22.03 Vacancies. If any vacancy exists on the Commission caused by resignation, or otherwise, a successor for the residue of the term shall be appointed in the same manner as the original appointee.

(Code of Iowa, Sec. 392.1)

22.04 Compensation. All members of the Commission shall serve without compensation, except their actual expenses, which shall be subject to the approval of the Council.

(Code of Iowa, Sec. 392.1)

22.05 Powers and Duties. The Commission shall have and exercise the following powers and duties:

1. Selection of Officers. The Commission shall choose annually at its first regular meeting one of its members to act as Chairperson and another as Vice Chairperson, who shall perform all the duties of the Chairperson during the Chairperson’s absence or disability.

(Code of Iowa, Sec. 392.1)

2. Adopt Rules and Regulations. The Commission shall adopt such rules and regulations governing its organization and procedure as it may deem necessary.

(Code of Iowa, Sec. 392.1)

3. Zoning. The Commission shall have and exercise all the powers and duties and privileges in establishing the City zoning regulations and other related matters and may from time to time recommend to the Council amendments, supplements, changes or modifications, all as provided by Chapter 414 of the Code of Iowa.

(Code of Iowa, Sec. 414.6)

4. Recommendations of Improvements. No statuary, memorial or work of art in a public place, and no public building, bridge, viaduct, street fixtures, public structure or appurtenances, shall be located or erected, or site therefor obtained, nor shall any
permit be issued by any department of the City for the erection or location thereof until and unless the design and proposed location of any such improvement shall have been submitted to the Commission and its recommendations thereon obtained, except such requirements and recommendations shall not act as a stay upon action for any such improvement when the Commission after thirty (30) days’ written notice requesting such recommendations, shall have failed to file same.

(Code of Iowa, Sec. 392.1)

5. Review and Comment on Plats. All plans, plats, or re-plats of subdivision or re-subdivisions of land embraced in the City or adjacent thereto, laid out in lots or plats with the streets, alleys, or other portions of the same intended to be dedicated to the public in the City, shall first be submitted to the Commission and its recommendations obtained before approval by the Council.

(Code of Iowa, Sec. 392.1)

6. Review and Comment of Street and Park Improvements. No plan for any street, park, parkway, boulevard, traffic-way, river front, or other public improvement affecting the City plan shall be finally approved by the City or the character or location thereof determined, unless such proposal shall first have been submitted to the Commission and the Commission shall have had thirty (30) days within which to file its recommendations thereon.

(Code of Iowa, Sec. 392.1)

7. Fiscal Responsibilities. The Commission shall have full, complete and exclusive authority to expend for and on behalf of the City all sums of money appropriated to it, and to use and expend all gifts, donations or payments whatsoever which are received by the City for City planning and zoning purposes.

(Code of Iowa, Sec. 392.1)

8. Limitation on Entering Contracts. The Commission shall have no power to contract debts beyond the amount of its original or amended appropriation as approved by the Council for the present year.

(Code of Iowa, Sec. 392.1)

9. Annual Report. The Commission shall each year make a report to the Mayor and Council of its proceedings, with a full statement of its receipts, disbursements and the progress of its work during the preceding fiscal year.

(Code of Iowa, Sec. 392.1)
CHAPTER 30

POLICE DEPARTMENT

30.01 DEPARTMENT ESTABLISHED. The police department of the City is established to provide for the preservation of peace and enforcement of law and ordinances within the corporate limits of the City.

30.02 ORGANIZATION. The department consists of the Police Chief and such other law enforcement officers and personnel, whether full or part time, as may be authorized by the Council.

30.03 PEACE OFFICER QUALIFICATIONS. In no case shall any person be selected or appointed as a law enforcement officer unless such person meets the minimum qualification standards established by the Iowa Law Enforcement Academy.

(Code of Iowa, Sec. 80B.11)

30.04 REQUIRED TRAINING. All peace officers shall have received the minimum training required by law at an approved law enforcement training school within one year of employment. Peace officers shall also meet the minimum in-service training as required by law.

(Code of Iowa, Sec. 80B.11 [2])
(IAC, 501-3 and 501-8)

30.05 COMPENSATION. Members of the department are designated by rank and receive such compensation as shall be determined by resolution of the Council.

30.06 POLICE CHIEF APPOINTED. The Mayor shall appoint and dismiss the Police Chief, subject to the consent of a majority of the Council.

(Code of Iowa, Sec. 372.4)

30.07 POLICE CHIEF: DUTIES. The Police Chief has the following powers and duties subject to the approval of the Council.

(Code of Iowa, Sec. 372.13 [4])

1. General. Perform all duties required of the police chief by law or ordinance.
2. Enforce Laws. Enforce all laws, ordinances and regulations and bring all persons committing any offense before the proper court.
3. Writs. Execute and return all writs and other processes directed to the Police Chief.
4. Accident Reports. Report all motor vehicle accidents investigated to the State Department of Transportation.
   (Code of Iowa, Sec. 321.266)

5. Prisoners. Be responsible for the custody of prisoners, including conveyance to detention facilities as may be required.

6. Assist Officials. When requested, provide aid to other City officers, boards and commissions in the execution of their official duties.

7. Investigations. Provide for such investigation as may be necessary for the prosecution of any person alleged to have violated any law or ordinance.

8. Record of Arrests. Keep a record of all arrests made in the City by showing whether said arrests were made under provisions of State law or City ordinance, the offense charged, who made the arrest and the disposition of the charge.

9. Reports. Compile and submit to the Mayor and Council an annual report as well as such other reports as may be requested by the Mayor or Council.

10. Command. Be in command of all officers appointed for police work and be responsible for the care, maintenance and use of all vehicles, equipment and materials of the department.

30.08 DEPARTMENTAL RULES. The Police Chief shall establish such rules, not in conflict with the Code of Ordinances, and subject to the approval of the Council, as may be necessary for the operation of the department.

30.09 SUMMONING AID. Any peace officer making a legal arrest may orally summon as many persons as the officer reasonably finds necessary to aid the officer in making the arrest.
   (Code of Iowa, Sec. 804.17)

30.10 TAKING WEAPONS. Any person who makes an arrest may take from the person arrested all items which are capable of causing bodily harm which the arrested person may have within such person’s control to be disposed of according to law.
   (Code of Iowa, Sec. 804.18)

30.11 CONTRACT LAW ENFORCEMENT. In lieu of the appointment of a police chief by the Mayor as provided by Section 30.06, the Council may contract with the County Sheriff or any other qualified lawful entity to provide law enforcement services within the City and in such event the Sheriff or such other entity shall have and exercise the powers and duties of the Police Chief as provided herein.
   (Code of Iowa, Sec. 28E.30)

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CHAPTER 31
RESERVE PEACE OFFICERS

31.01  ESTABLISHMENT OF FORCE. A force of reserve peace officers is hereby established. A reserve peace officer is a volunteer, non-regular, sworn member of the Police Department who will serve with or without compensation and has regular police powers while functioning as the Police Department’s representative, and will participate on a regular basis in the agency’s activities, including those of crime prevention and control, preservation of the peace and enforcement of the law.

31.02  TRAINING. Training for individuals appointed as reserve peace officers shall be provided by instructors in a community college or other facility, including a law enforcement agency, selected by the individual and approved by the law enforcement agency and the Iowa Law Enforcement Academy. All standards and training required under Chapter 80D of the Code of Iowa constitute the minimum standards for reserve peace officers. Upon satisfactory completion of training, the Iowa Law Enforcement Academy shall certify the individual as a reserve peace officer. There shall be no exemptions from the personal and training standards provided for in this chapter.

31.03  STATUS OF RESERVE OFFICERS. Reserve peace officers shall serve as peace officers on the orders and at the discretion of the Police Chief. While in the actual performance of official duties, reserve peace officers shall be vested with the same rights, privileges, obligations, and duties as any other peace officer.

31.04  CARRYING WEAPONS. A member of the reserve force shall not carry a weapon in the line of duty until he or she has been approved by the Council and certified by the Iowa Law Enforcement Academy Council. After approval and certification, a reserve peace officer may carry a weapon in the line of duty only when authorized by the Police Chief.

31.05  SUPPLEMENTARY CAPACITY. Reserve peace officers shall act only in a supplementary capacity to the regular force and shall not assume full-time duties of regular peace officers without first complying with all the requirements of regular peace officers.

31.06  SUPERVISION OF OFFICERS. Reserve peace officers shall be subordinate to the Police Chief, shall not serve as peace officers unless under the direction of the Police Chief, and shall wear a uniform prescribed by the Police Chief, unless that superior officer designates alternate apparel for use when engaged in assignments involving special investigations, civil process, court duties, jail duties and the handling of mental patients. The reserve peace officer shall not wear an insignia of rank.
31.07 **NO REDUCTION OF REGULAR FORCE.** There shall be no reduction of the authorized size of the regular law enforcement department of the City because of the establishment or utilization of reserve peace officers.

31.08 **COMPENSATION.** While performing official duties, each reserve peace officer shall be considered an employee of the City and shall be paid a minimum of $1.00 per year. The Council may provide additional monetary assistance for the purchase and maintenance of uniforms and equipment used by reserve peace officers.

31.09 **BENEFITS WHEN INJURED.** Hospital and medical assistance and benefits, as provided in Chapter 85 of the Code of Iowa, shall be provided by the Council to members of the reserve force who sustain injury in the course of performing official duties.

31.10 **LIABILITY AND FALSE ARREST INSURANCE.** Liability and false arrest insurance shall be provided by the City to members of the reserve force while performing official duties in the same manner as for regular peace officers.

31.11 **NO PARTICIPATION IN PENSION FUND OR RETIREMENT SYSTEM.** This chapter shall not be construed to authorize or permit a reserve peace officer to become eligible for participation in a pension fund or retirement system created by the laws of the State and of which regular peace officers may become members.

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CHAPTER 35

HAZARDOUS SUBSTANCE SPILLS

35.01 Purpose
In order to reduce the danger to the public health, safety and welfare from the leaks and spills of hazardous substances, these regulations are promulgated to establish responsibility for the treatment, removal and cleanup of hazardous substance spills within the City limits.

35.02 Definitions. For purposes of this chapter the following terms are defined:

1. “Cleanup” means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove or dispose of a hazardous substance.
   (Code of Iowa, Sec. 455B.381[1])

2. “Hazardous condition” means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the State or into the atmosphere which creates an immediate or potential danger to the public health or safety or to the environment.
   (Code of Iowa, Sec. 455B.381[4])

3. “Hazardous substance” means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. “Hazardous substance” may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under Section 311 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the Secretary of Transportation under the Hazardous Materials Transportation Act.
   (Code of Iowa, Sec. 455B.381[5])

4. “Responsible person” means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance, the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.
   (Code of Iowa, Sec. 455B.381[7])

35.03 Cleanup Required. Whenever a hazardous condition is created by the deposit, injection, dumping, spilling, leaking or placing of a hazardous substance, so that the hazardous substance or a constituent of the hazardous substance may enter the environment or...
be emitted into the air or discharged into any waters, including ground waters, the responsible person shall cause the condition to be remedied by a cleanup, as defined in the preceding section, as rapidly as feasible to an acceptable, safe condition. The costs of cleanup shall be borne by the responsible person. If the responsible person does not cause the cleanup to begin in a reasonable time in relation to the hazard and circumstances of the incident, the City may, by an authorized officer, give reasonable notice, based on the character of the hazardous condition, said notice setting a deadline for accomplishing the cleanup and stating that the City will proceed to procure cleanup services and bill the responsible person for all costs associated with the cleanup if the cleanup is not accomplished within the deadline. In the event that it is determined that immediate cleanup is necessary as a result of the present danger to the public health, safety and welfare, then no notice shall be required and the City may proceed to procure the cleanup and bill the responsible person for all costs associated with the cleanup. If the bill for those services is not paid within thirty (30) days, the City Attorney shall proceed to obtain payment by all legal means. If the cost of the cleanup is beyond the capacity of the City to finance it, the authorized officer shall report to the Council and immediately seek any State or Federal funds available for said cleanup.

35.04 LIABILITY FOR CLEANUP COSTS. The responsible person shall be strictly liable to the City for all of the following:

1. The reasonable cleanup costs incurred by the City or the agents of the City as a result of the failure of the responsible person to clean up a hazardous substance involved in a hazardous condition.

2. The reasonable costs incurred by the City or the agents of the City to evacuate people from the area threatened by a hazardous condition caused by the person.

3. The reasonable damages to the City for the injury to, destruction of, or loss of City property, including parks and roads, resulting from a hazardous condition caused by that person, including the costs of assessing the injury, destruction or loss.

4. The excessive and extraordinary cost incurred by the City or the agents of the City in responding at and to the scene of a hazardous condition caused that that person.

35.05 NOTIFICATIONS.

1. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the State Department of Natural Resources and the Sheriff’s Department/County Office of Emergency Management of the occurrence of a hazardous condition as soon as possible but not later than six (6) hours after the onset of the hazardous condition or discovery of the hazardous condition. The Sheriff’s Department/County Office of Emergency Management shall immediately notify the Department of Natural Resources.

2. Any other person who discovers a hazardous condition shall notify the Sheriff’s Department/County Office of Emergency Management, which shall then notify the Department of Natural Resources.

35.06 POLICE AUTHORITY. If the circumstances reasonably so require, the law enforcement officer or an authorized representative may:

1. Evacuate persons from their homes to areas away from the site of a hazardous condition, and
2. Establish perimeters or other boundaries at or near the site of a hazardous condition and limit access to cleanup personnel.

No person shall disobey an order of any law enforcement officer issued under this section.

35.07 LIABILITY. The City shall not be liable to any person for claims of damages, injuries, or losses resulting from any hazardous condition, unless the City is the responsible person as defined in Section 35.02[4].
CHAPTER 36
VOLUNTEER FIRE AND EMERGENCY SERVICES DEPARTMENT

36.01  ESTABLISHMENT AND PURPOSE. A Volunteer Fire and Emergency Response Department is hereby established to prevent and extinguish fire and to protect lives and property against fires, to promote fire prevention and fire safety, and to respond to other emergencies as listed in the department's standard operating procedures. An EMS emergency response department is also established by this chapter.

36.02  TRAINING. All members of the department shall meet the minimum training standards established by the State Fire Marshal and attend and actively participate in regular or special training drills or programs as directed by the Fire Chief.

(Code of Iowa, Sec. 100B.2[4])

36.03  ELECTION OF FIRE CHIEF. The Fire Department may elect the Fire Chief, subject approval of the Council for a term of two years or to fill a vacancy. The Council shall furnish the department's attendance records for drill, meetings and fires, and shall give due consideration to such records in approving the appointment of a Fire Chief. The Council may remove, suspend, or demote the Fire Chief for neglect of duty, disobedience, misconduct or failure to properly perform the duties of Chief by written order specifying the reasons for removal, suspension, or demotion, which shall be filed with the Clerk. Upon request in writing filed with the Clerk by the Chief, the Council shall hold a public hearing on proposed action set forth in the written order.

36.04  FIRE CHIEF’S DUTIES. The Fire Chief shall command all operations of the department, and be responsible for the care, maintenance and use of all vehicles and equipment of the department. Subject to Council approval, the Chief shall establish and maintain departmental rules and standard operating procedures to implement the requirements of this chapter. The Chief shall provide every firefighter with a written copy of these rules and procedures. With the approval of the Council, the Chief shall appoint carefully selected volunteer firefighters, fill vacancies among them, and may discharge them. The Chief shall keep a record of the names, ages, and residences of the firefighters and be responsible for their training and supervision, and shall maintain attendance records for drill meetings and fires. The Chief shall investigate the cause, origin and circumstances of each fire by which property has been destroyed or damaged or which results in bodily injury to any person. Whenever death, serious bodily injury to any person, or property damage in excess of two hundred thousand dollars ($200,000.00) has occurred as a result of fire, or if arson is suspected, the Chief shall notify the State Fire Marshal’s division immediately. The Chief shall report other fire incidents within ten (10) days following each month to the State Fire Marshal in
accordance with law. The Chief has the authority to enter and inspect any building or premises in the performance of duties and shall make written orders to correct any conditions that are likely to cause fire or endanger other buildings and property.

36.05 VOLUNTEER FIREFIGHTERS. The Chief shall appoint volunteer firefighters with the approval of the Council, in accordance with established criteria to serve as a volunteer firefighter.

36.06 FIREFIGHTERS’ DUTIES. When called, all firefighters shall report for duty immediately in the manner directed by the Chief. They shall be subject to call at any time. They shall obey strictly the commands of any other firefighter who has been appointed by the Chief to be in command temporarily. Firefighters shall report to the Chief in advance if they expect to be absent from the City for twelve (12) hours or more. Firefighters shall report for training as ordered by the Chief.

36.07 FIRES OUTSIDE CITY LIMITS. The department shall answer calls to fires and other emergencies outside the City limits if the Fire Chief or the Chief’s designee determines that such emergency exists and that such action will not endanger persons and property within the City limits and subject to mutual aid or contract agreements.

36.08 FIREFIGHTERS’ ASSOCIATION. Volunteer firefighters may form an association to promote the welfare of firefighters and fire prevention and fire fighting capabilities.

36.09 EMS - FIRST RESPONDERS’ DUTIES. The first responders shall have a person in command of all operations of the department, and be responsible for the care, maintenance and use of all vehicles and equipment of the department. Subject to Council approval, the person in charge shall establish and maintain departmental rules and standard operating procedures to implement the requirements of this chapter. The person in charge shall provide every first responder with a written copy of these rules and procedures. With the approval of the Council, the person in charge shall appoint carefully selected volunteer first responders, fill vacancies among them, and may discharge them. The person in charge shall keep a record of the names, ages, and residences of the first responders and be responsible for their training and supervision, and shall maintain attendance records for meetings, training and responses.

36.10 VOLUNTEER FIRST RESPONDERS. The person in charge shall appoint first responders with the approval of the Council, in accordance with established criteria to serve as first responders.

36.11 EMS - FIRST RESPONDERS’ ASSOCIATION. Volunteer first responders may form an association to promote the welfare of first responders and their capabilities.

36.12 WORKER’S COMPENSATION AND HOSPITALIZATION INSURANCE. The Council shall contract to provide insurance for worker’s compensation and to provide insurance for the costs of hospitalization, nursing and medical attention for volunteer firefighters and first responders injured in the performance of their duties as firefighters and first responders. All volunteer firefighters and first responders shall be covered by the contract.

36.13 LIABILITY INSURANCE. The Council shall provide insurance to insure against liability of the members of the departments for injuries, death or property damage arising out of and resulting from the performance of department duties.
36.14 FIRE SERVICE FEES AND CHARGES.

1. Service Charges. All users of fire services shall be charged a fee for such services rendered by the Garnavillo Fire Department in responding to a vehicular accident or fire. For the purposes of this section the word “users” shall be defined as all those people who have requested or who are lawfully responsible for requesting such services.

2. Fees for Service. The amount of fees for use of the fire department and to whom those fees shall be charged shall be set by Council resolution. All fire department fees and charges are due upon presentation of a statement for said fees and charges and shall be paid to the City Clerk. Actions for collection of same shall be brought in the name of the municipality and in the same manner as other actions at law.

3. Billing. Invoices shall be issued by the Fire Chief and City Clerk. Fees collected will be deposited in the City’s fire department equipment fund. Such funds shall be used to purchase equipment, training, services and supplies for the City of Garnavillo Fire Department.
CHAPTER 40

PUBLIC PEACE

40.01 ASSAULT. No person shall, without justification, commit any of the following:

1. Pain or Injury. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.
   
   (Code of Iowa, Sec. 708.1 [1])

2. Threat of Pain or Injury. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.
   
   (Code of Iowa, Sec. 708.1 [2])

However, where the person doing any of the above enumerated acts, and such other person, are voluntary participants in a sport, social or other activity, not in itself criminal, and such act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk or serious injury or breach of the peace, the act is not an assault. Provided, where the person doing any of the above enumerated acts is employed by a school district or accredited nonpublic school, or is an area education agency staff member who provides services to a school or school district, and intervenes in a fight or physical struggle, or other disruptive situation that takes place in the presence of the employee or staff member performing employment duties in a school building, on school grounds or at an official school function regardless of the location, the act is not an assault, whether the fight or physical struggle or other disruptive situation is between students or other individuals if the degree and the force of the intervention is reasonably necessary to restore order and to protect the safety of those assembled.
   
   (Code of Iowa, Sec. 708.1)

40.02 HARASSMENT. No person shall commit harassment.

1. A person commits harassment when, with intent to intimidate, annoy or alarm another person, the person does any of the following:

   A. Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.
      
      (Code of Iowa, Sec. 708.7)

   B. Places any simulated explosive or simulated incendiary device in or near any building, vehicle, airplane, railroad engine or railroad car, or boat occupied by the other person.
      
      (Code of Iowa, Sec. 708.7)
C. Orders merchandise or services in the name of another, or to be another, without such other person’s knowledge or consent.
   (Code of Iowa, Sec. 708.7)

D. Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the same did not occur.
   (Code of Iowa, Sec. 708.7)

2. A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate or alarm that other person. As used in this section, unless the context otherwise requires, “personal contact” means an encounter in which two or more people are in visual or physical proximity to each other. “Personal contact” does not require a physical touching or oral communication, although it may include these types of contacts.

40.03 DISORDERLY CONDUCT. No person shall do any of the following:

1. Fighting. Engage in fighting or violent behavior in any public place or in or near any lawful assembly of persons, provided that participants in athletic contests may engage in such conduct which is reasonably related to that sport.
   (Code of Iowa, Sec. 723.4 [1])

2. Noise. Make loud and raucous noise in the vicinity of any residence or public building which causes unreasonable distress to the occupants thereof.
   (Code of Iowa, Sec. 723.4 [2])

3. Abusive Language. Direct abusive epithets or make any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.
   (Code of Iowa, Sec. 723.4 [3])

4. Disrupt Lawful Assembly. Without lawful authority or color of authority, disturb any lawful assembly or meeting of persons by conduct intended to disrupt the meeting or assembly.
   (Code of Iowa, Sec. 723.4 [4])

5. False Report of Catastrophe. By words or action, initiate or circulate a report or warning of fire, epidemic, or other catastrophe, knowing such report to be false or such warning to be baseless.
   (Code of Iowa, Sec. 723.4 [5])

6. Disrespect of Flag. Knowingly and publicly use the flag of the United States in such a manner as to show disrespect for the flag as a symbol of the United States, with the intent or reasonable expectation that such use will provoke or encourage another to commit trespass or assault. As used in this subsection:
   (Code of Iowa, Sec. 723.4[6])
   A. “Deface” means to intentionally mar the external appearance.
   B. “Defile” means to intentionally make physically unclean.
   C. “Flag” means a piece of woven cloth or other material designed to be flown from a pole or mast.
D. “Mutilate” means to intentionally cut up or alter so as to make imperfect.
E. “Show disrespect” means to deface, defile, mutilate, or trample.
F. “Trample” means to intentionally tread upon or intentionally cause a machine, vehicle, or animal to tread upon.

7. Obstruct Use of Street. Without authority or justification, obstruct any street, sidewalk, highway, or other public way, with the intent to prevent or hinder its lawful use by others.

(Code of Iowa, Sec. 723.4[7])

8. Funeral or Memorial Service. Within 500 feet of the building or other location where a funeral or memorial service is being conducted, or within 500 feet of a funeral procession or burial:

A. Make loud and raucous noise which causes unreasonable distress to the persons attending the funeral or memorial service or participating in the funeral procession.
B. Direct abusive epithets or make any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.
C. Disturb or disrupt the funeral, memorial service, funeral procession or burial by conduct intended to disturb or disrupt the funeral, memorial service, funeral procession or burial.

This subsection applies to conduct within 60 minutes preceding, during, and within 60 minutes after a funeral, memorial service, funeral procession, or burial.

(Code of Iowa, Sec. 723.5)

40.04 UNLAWFUL ASSEMBLY. It is unlawful for three (3) or more persons to assemble together, with them or any of them acting in a violent manner, and with intent that they or any of them will commit a public offense. No person shall willingly join in or remain part of an unlawful assembly, knowing or having reasonable grounds to believe it is such.

(Code of Iowa, Sec. 723.2)

40.05 FAILURE TO DISPERSE. A peace officer may order the participants in a riot or unlawful assembly or persons in the immediate vicinity of a riot or unlawful assembly to disperse. No person within hearing distance of such command shall refuse to obey.

(Code of Iowa, Sec. 723.3)
CHAPTER 41

PUBLIC HEALTH AND SAFETY

41.01 DISTRIBUTING DANGEROUS SUBSTANCES. No person shall distribute samples of any drugs or medicine, or any corrosive, caustic, poisonous or other injurious substance unless the person delivers such into the hands of a competent person, or otherwise takes reasonable precautions that the substance will not be taken by children or animals from the place where the substance is deposited.

(Code of Iowa, Sec. 727.1)

41.02 FALSE REPORTS TO OR COMMUNICATIONS WITH PUBLIC SAFETY ENTITIES. No person shall do any of the following:

(Code of Iowa, Sec. 718.6)

1. Report or cause to be reported false information to a fire department, a law enforcement authority or other public safety entity, knowing that the information is false, or report the alleged occurrence of a criminal act knowing the act did not occur.
2. Telephone an emergency 911 communications center, knowing that he or she is not reporting an emergency or otherwise needing emergency information or assistance.
3. Knowingly provide false information to a law enforcement officer who enters the information on a citation.

41.03 REFUSING TO ASSIST OFFICER. Any person who is requested or ordered by any magistrate or peace officer to render the magistrate or officer assistance in making or attempting to make an arrest, or to prevent the commission of any criminal act, shall render assistance as required. No person shall unreasonably and without lawful cause, refuse or neglect to render assistance when so requested.

(Code of Iowa, Sec. 719.2)

41.04 HARASSMENT OF PUBLIC OFFICERS AND EMPLOYEES. No person shall willfully prevent or attempt to prevent any public officer or employee from performing the officer’s or employee’s duty.

(Code of Iowa, Sec. 718.4)

41.05 INTERFERENCE WITH OFFICIAL ACTS. No person shall knowingly resist or obstruct anyone known by the person to be a peace officer, emergency medical care provider or firefighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer, emergency medical care provider or firefighter, or shall knowingly resist or obstruct the service or execution by any authorized person of any civil or criminal process or order of any court. The terms “resist” and
“obstruct” as used in this section do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically.

(Code of Iowa, Sec. 719.1)

41.06 ABANDONED OR UNATTENDED REFRIGERATORS. No person shall abandon or otherwise leave unattended any refrigerator, ice box, or similar container, with doors that may become locked, outside of buildings and accessible to children, nor shall any person allow any such refrigerator, ice box, or similar container, to remain outside of buildings on premises in the person’s possession or control, abandoned or unattended and so accessible to children.

(Code of Iowa, Sec. 727.3)

41.07 ANTENNA AND RADIO WIRES. It is unlawful for a person to allow antenna wires, antenna supports, radio wires, or television wires to exist over any street, alley, highway, sidewalk, public way, public ground, or public building without written consent of the Council.

(Code of Iowa, Sec. 364.12[2])

41.08 BARBED WIRE AND ELECTRIC FENCES. It is unlawful for a person to use barbed wire or electric fences to enclose land within the City limits without the written consent of the Council unless such land consists of five (5) acres or more and is used as agricultural land.

41.09 DISCHARGING WEAPONS.

1. It is unlawful for a person to discharge rifles, shotguns, revolvers, pistols, guns, or other firearms of any kind within the City limits except by written consent of the Council.

2. No person shall intentionally discharge a firearm in a reckless manner.

41.10 THROWING AND SHOOTING. It is unlawful for a person to throw stones, bricks, or missiles of any kind or to shoot arrows, paintballs, rubber guns, slingshots, air rifles, BB guns, or other dangerous instruments in City limits, without written consent of the Council.

41.11 URINATING AND DEFECATING. It is unlawful for any person to urinate or defecate onto any sidewalk, street, alley, or other public way, or onto any public or private building, including but not limited to the wall, floor, hallway, steps, stairway, doorway, or window thereof, or onto any public or private land.

41.12 FIREWORKS. The sale, use and exploding of fireworks within the City are subject to the following:

(Code of Iowa, Sec. 727.2)

1. Definition. The term “fireworks” includes any explosive composition, or combination of explosive substances, or articles prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and specifically includes blank cartridges, firecrackers, torpedoes, skyrockets, roman candles, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or other device containing any explosive substance.
2. Regulations. It is unlawful for any person to offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided the City may grant permission for the display of fireworks by a City agency, fair associations, amusement parks and other organizations or groups of individuals approved by City authorities when such fireworks display will be handled by a competent operator. No permit shall be granted hereunder unless the operator or sponsoring organization has filed with the City evidence of insurance in the following amounts:

   A. Personal Injury: $250,000 per person.
   B. Property Damage: $50,000
   C. Total Exposure: $1,000,000

3. Exceptions. This section does not prohibit the sale by a resident, dealer, manufacturer or jobber of such fireworks as are not prohibited; or the sale of any kind of fireworks if they are to be shipped out of State; or the sale or use of blank cartridges for a show or theatre, or for signal purposes in athletic sports or by railroads or trucks for signal purposes, or by a recognized military organization. This section does not apply to any substance or composition prepared and sold for medicinal or fumigation purposes.

41.13 PROVIDING FALSE IDENTIFICATION INFORMATION. No person shall knowingly provide false identification information to anyone known by the person to be a peace officer, emergency medical care provider, or firefighter, whether paid or volunteer, in the performance of any act that is within the scope of the lawful duty or authority of that officer, emergency medical care provider, or firefighter. (Ord. 05-2010 – Oct. 10 Supp.)

(Code of Iowa, Sec. 719.1A)
CHAPTER 42

PUBLIC AND PRIVATE PROPERTY

42.01 TRESPASSING. It is unlawful for a person to knowingly trespass upon the property of another. As used in this section, the term “property” includes any land, dwelling, building, conveyance, vehicle or other temporary or permanent structure whether publicly or privately owned. The term “trespass” means one or more of the following acts:

(Code of Iowa Sec. 716.7 and 716.8)

1. Entering Property Without Permission. Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense or to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate.

(Code of Iowa, Sec. 716.7 [2a])

2. Entering or Remaining on Property. Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.

(Code of Iowa, Sec. 716.7 [2b])

3. Interfering with Lawful Use of Property. Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.

(Code of Iowa, Sec. 716.7 [2c])

4. Using Property Without Permission. Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

(Code of Iowa, Sec. 716.7 [2d])

None of the above shall be construed to prohibit entering upon the property of another for the sole purpose of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property.

(Code of Iowa, Sec. 716.7(3))

42.02 CRIMINAL MISCHIEF. It is unlawful, for any person who has no right to do so, to intentionally damage, deface, alter, or destroy property.

(Code of Iowa, Sec. 716.1)
42.03 DEFACING PROCLAMATIONS OR NOTICES. It is unlawful for a person intentionally to deface, obliterate, tear down, or destroy in whole or in part, any transcript or extract from or of any law of the United States or the State, or any proclamation, advertisement or notification, set up at any place within the City by authority of the law or by order of any court, during the time for which the same is to remain set up.

(Code of Iowa, Sec. 716.1)

42.04 UNAUTHORIZED ENTRY. No unauthorized person shall enter or remain in or upon any public building, premises or grounds in violation of any notice posted thereon or when said building, premises or grounds are closed and not open to the public. When open to the public, a failure to pay any required admission fee also constitutes an unauthorized entry.

42.05 FRAUD. It is unlawful for any person to commit a fraudulent practice as defined in Section 714.8 of the Code of Iowa.

(Code of Iowa, Sec. 714.8)

42.06 THEFT. It is unlawful for any person to commit theft as defined in Section 714.1 of the Code of Iowa.

(Code of Iowa, Sec. 714.1)

42.07 OTHER PUBLIC PROPERTY OFFENSES. The following chapters of this Code of Ordinances contain regulations prohibiting or restricting other activities or conditions which are also deemed to be public property offenses:

1. Chapter 21 – Library
   A. Section 21.10 – Injury to Books or Property
   B. Section 21.11 – Theft of Library Property

2. Chapter 105 – Solid Waste Control and Recycling
   A. Section 105.07 – Littering Prohibited
   B. Section 105.08 – Open Dumping Prohibited

3. Chapter 135 – Street Use and Maintenance
   A. Section 135.01 – Removal of Warning Devices
   B. Section 135.02 – Obstructing or Defacing
   C. Section 135.03 – Placing Debris On
   D. Section 135.04 – Playing In
   E. Section 135.05 – Traveling on Barricaded Street or Alley
   F. Section 135.08 – Burning Prohibited
   G. Section 135.12 – Dumping of Snow

4. Chapter 136 – Sidewalk Regulations
   A. Section 136.11 – Interference with Sidewalk Improvements
   B. Section 136.15 – Fires or Fuel on Sidewalks
   C. Section 136.16 – Defacing
   D. Section 136.17 – Debris on Sidewalks
E. Section 136.18 – Merchandise Display
F. Section 136.19 – Sales Stands
CHAPTER 43

DRUG PARAPHERNALIA

43.01 Purpose. The purpose of this chapter is to prohibit the use, possession with intent to use, manufacture, and delivery of drug paraphernalia as defined herein.

43.02 Controlled Substance Defined. The term “controlled substance” as used in this chapter is defined as the term “controlled substance” is defined in the Uniform Controlled Substance Act, Chapter 124 of the Code of Iowa, as it now exists or is hereafter amended.

43.03 Drug Paraphernalia Defined. The term “drug paraphernalia” as used in this chapter means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, concealing, containing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Act, Chapter 124 of the Code of Iowa. It includes, but is not limited to:

1. Growing Kits. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

2. Processing Kits. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.

3. Isomerization Devices. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.

4. Testing Equipment. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.

5. Scales. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.

6. Diluents. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used, intended for use, or designed for use in cutting controlled substances.

7. Separators; Sifters. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana.

9. Containers. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

10. Storage Containers. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.

11. Injecting Devices. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

12. Ingesting-Inhaling Device. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing heroin, marijuana, cocaine, hashish, or hashish oil into the human body, such as:
   A. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
   B. Water pipes;
   C. Carburetion tubes and devices;
   D. Smoking and carburetion masks;
   E. Roach clips, meaning objects used to hold burning materials, such as a marijuana cigarette that has become too small or too short to be held in the hand;
   F. Miniature cocaine spoons and cocaine vials;
   G. Chamber pipes;
   H. Carburetor pipes;
   I. Electric pipes;
   J. Air driven pipes;
   K. Chillums;
   L. Bongs;
   M. Ice pipes or chillers.

43.04 DETERMINING FACTORS. In determining whether an object is drug paraphernalia for the purpose of enforcing this chapter, the following factors should be considered in addition to all other logically relevant factors:

1. Statements. Statements by an owner or by anyone in control of the object concerning its use.

2. Prior Convictions. Prior convictions, if any, of an owner, or of anyone in control of the object under any State or federal law relating to any controlled substance.

3. Proximity to Violation. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substance Act, Chapter 124 of the Code of Iowa.
4. Proximity to Substances. The proximity of the object to controlled substances.

5. Residue. The existence of any residue of controlled substances on the object.

6. Evidence of Intent. Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of the Uniform Controlled Substances Act, Chapter 124 of the Code of Iowa.

7. Innocence of an Owner. The innocence of an owner, or of anyone in control of the object, as to a direct violation of the Uniform Controlled Substances Act, Chapter 124 of the Code of Iowa, should not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.

8. Instructions. Instructions, oral or written, provided with the object concerning its use.

9. Descriptive Materials. Descriptive materials accompanying the object which explain or depict its use.

10. Advertising. National and local advertising concerning its use.

11. Displayed. The manner in which the object is displayed for sale.

12. Licensed Distributor or Dealer. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

13. Sales Ratios. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise.

14. Legitimate Uses. The existence and scope of legitimate uses for the object in the community.


43.05 POSSESSION OF DRUG PARAPHERNALIA. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substance Act, Chapter 124 of the Code of Iowa.

43.06 MANUFACTURE, DELIVERY, OR OFFERING FOR SALE. It is unlawful for any person to deliver, possess with intent to deliver, manufacture with intent to deliver, or offer for sale drug paraphernalia, intending that the drug paraphernalia will be used, or knowing, or under circumstances where one reasonably should know that it will be used, or knowing that it is designed for use to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act, Chapter 124 of the Code of Iowa.
CHAPTER 45
ALCOHOL CONSUMPTION AND INTOXICATION

45.01 PERSONS UNDER LEGAL AGE. As used in this section, “legal age” means twenty-one (21) years of age or more.

1. Social Host. A person who is the owner or lessee of, or who otherwise has control over, property that is not a licensed premises shall not knowingly permit any person, knowing or having reasonable cause to believe the person to be under the age of eighteen, to consume or possess on such property any alcoholic liquor, wine, or beer. The provisions of this subsection do not apply to a landlord or manager of the property or to a person under legal age who consumes or possesses any alcoholic liquor, wine, or beer in connection with a religious observance, ceremony, or rite.

(Code of Iowa, Sec. 123.47[1A])

2. Purchase, Consume, or Possess. A person or persons under legal age shall not purchase or attempt to purchase, consume, or individually or jointly have alcoholic liquor, wine or beer in their possession or control; except in the case of liquor, wine or beer given or dispensed to a person under legal age within a private home and with the knowledge, presence and consent of the parent or guardian, for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages, wine, and beer during the regular course of the person’s employment by a liquor control licensee, or wine or beer permittee under State laws.

(Code of Iowa, Sec. 123.47[2])

3. Misrepresentation of Age. A person under legal age shall not misrepresent the person’s age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee.

(Code of Iowa, Sec. 123.49[3])

(Ord. 11-2014 – Nov. 14 Supp.)

45.02 PUBLIC CONSUMPTION OR INTOXICATION.

1. As used in this section unless the context otherwise requires:

A. “Arrest” means the same as defined in Section 804.5 of the Code of Iowa and includes taking into custody pursuant to Section 232.19 of the Code of Iowa.

B. “Chemical test” means a test of a person’s blood, breath, or urine to determine the percentage of alcohol present by a qualified person using devices and methods approved by the Commissioner of Public Safety.

C. “Peace officer” means the same as defined in Section 801.4 of the Code of Iowa.
D. “School” means a public or private school or that portion of a public or private school which provides teaching for any grade from kindergarten through grade twelve.

2. A person shall not use or consume alcoholic liquor, wine or beer upon the public streets or highways. A person shall not use or consume alcoholic liquor in any public place, except premises covered by a liquor control license. A person shall not possess or consume alcoholic liquors, wine, or beer on public school property or while attending any public or private school-related function. A person shall not be intoxicated or simulate intoxication in a public place.

3. When a peace officer arrests a person on a charge of public intoxication under this section, the peace officer shall inform the person that the person may have a chemical test administered at the person’s own expense. If a device approved by the Commissioner of Public Safety for testing a sample of a person’s breath to determine the person’s blood alcohol concentration is available, that is the only test that need be offered the person arrested. In a prosecution for public intoxication, evidence of the results of a chemical test performed under this subsection is admissible upon proof of a proper foundation. The percentage of alcohol present in a person’s blood, breath, or urine established by the results of a chemical test performed within two hours after the person’s arrest on a charge of public intoxication is presumed to be the percentage of alcohol present at the time of arrest.

(Code of Iowa, Sec. 123.46)

45.03 OPEN CONTAINERS IN MOTOR VEHICLES. [See Section 62.01(47) and (48) of this Code of Ordinances.]
CHAPTER 46

MINORS

46.01  CURFEW. The Council has determined that a curfew for minors is necessary to promote the public health, safety, morals and general welfare of the City and specifically to reinforce the primary authority and responsibility of adults responsible for minors; to protect the public from the illegal acts of minors committed after the curfew hour; and to protect minors from improper influences and criminal activity that prevail in public places after the curfew hour.

1. Definitions. For use in this section, the following terms are defined:

A. “Emergency errand” means, but is not limited to, an errand relating to a fire, a natural disaster, an automobile accident or any other situation requiring immediate action to prevent serious illness, bodily injury or loss of life.

B. “Knowingly” means knowledge which a responsible adult should reasonably be expected to have concerning the whereabouts of a minor in that responsible adult’s custody. This is an objective standard. It shall, therefore, be no defense that an adult responsible for a minor was completely indifferent to the activities or conduct or whereabouts of the minor.

C. “Minor” means any unemancipated person under the age of eighteen (18) years.

D. “Nonsecured custody” means custody in an unlocked multipurpose area, such as a lobby, office or interrogation room which is not designed, set aside or used as a secure detention area, and the person arrested is not physically secured during the period of custody in the area; the person is physically accompanied by a peace officer or a person employed by the facility where the person arrested is being held; and the use of the area is limited to providing nonsecured custody only while awaiting transfer to an appropriate juvenile facility or to court, for contacting of and release to the person’s parents or other responsible adult or for other administrative purposes; but not for longer than six (6) hours without the oral or written order of a judge or magistrate authorizing the detention. A judge shall not extend the period of time in excess of six hours beyond the initial six-hour period.

E. “Public place” includes stores, parking lots, parks, playgrounds, streets, alleys and sidewalks dedicated to public use; and also includes such parts of buildings and other premises whether publicly or privately owned which are used by the general public or to which the general public is invited commercially for a fee or otherwise; or in or on which the general public is permitted without specific invitation; or to which the general public has access. For purposes of this section, a vehicle or other conveyance is considered to be a public place when in the areas defined above.
F. “Responsible adult” means a parent, guardian or other adult specifically authorized by law or authorized by a parent or guardian to have custody or control of a minor.

G. “Unemancipated” means unmarried and still under the custody or control of a responsible adult.

2. Curfew Established. A curfew applicable to minors is established and shall be enforced as follows: Unless accompanied by a responsible adult, no minor seventeen (17) years of age or younger shall be in any public place during the following times:

A. Sunday through Thursday – 10:30 p.m. to 5:00 a.m.
B. Friday and Saturday – 12:30 a.m. to 5:00 a.m.

3. Exceptions. The following are exceptions to the curfew:

A. The minor is accompanied by a responsible adult.
B. The minor is on the sidewalk or property where the minor resides or on either side of the place where the minor resides and the adult responsible for the minor has given permission for the minor to be there.
C. The minor is present at or is traveling between home and one of the following:
   (1) Minor’s place of employment in a business, trade or occupation in which the minor is permitted by law to be engaged or, if traveling, within one hour after the end of work;
   (2) Minor’s place of religious activity or, if traveling, within one hour after the end of the religious activity;
   (3) Governmental or political activity or, if traveling, within one hour after the end of the activity;
   (4) School activity or, if traveling, within one hour after the end of the activity;
   (5) Assembly such as a march, protest, demonstration, sit-in or meeting of an association for the advancement of economic, political, religious or cultural matters, or for any other activity protected by the First Amendment of the U.S. Constitution guarantees of free exercise of religion, freedom of speech, freedom of assembly or, if traveling, within one hour after the end of the activity.
   (6) The minor’s business, trade or occupation, in which the minor is permitted by law to be engaged, requires the presence of the minor in the public place.
D. The minor is on an emergency errand for a responsible adult;
E. The minor is engaged in interstate travel through the City beginning, ending or passing through the City when such travel is by direct route.

4. Responsibility of Adults. It is unlawful for any responsible adult knowingly to permit or to allow a minor to be in any public place in the City within the time periods prohibited by this section unless the minor’s presence falls within one of the above exceptions.
Enforcement Procedures.

A. Determination of Age. In determining the age of the juvenile and in the absence of convincing evidence such as a birth certificate or driver’s license, a peace officer on the street shall, in the first instance, use his or her best judgment in determining age.

B. Grounds for Arrest; Conditions of Custody. Grounds for arrest are that the person refuses to sign the citation without qualification; persists in violating the ordinance; refuses to provide proper identification or to identify himself or herself; or constitutes an immediate threat to the person’s own safety or to the safety of the public. A law enforcement officer who arrests a minor for a curfew violation may keep the minor in custody either in a shelter care facility or in any non-secured setting. The officer shall not place bodily restraints, such as handcuffs, on the minor unless the minor physically resists or threatens physical violence when being taken into custody. A minor shall not be placed in detention following a curfew violation.

C. Notification of Responsible Adult. After a minor is taken into custody, the law enforcement officer shall notify the adult responsible for the minor as soon as possible. The minor shall be released to the adult responsible for the minor upon the promise of such person to produce the child in court at such time as the court may direct.

D. Minor Without Adult Supervision. If a peace officer determines that a minor does not have adult supervision because the peace officer cannot locate the minor’s parent, guardian or other person legally responsible for the care of the minor, within a reasonable time, the peace officer shall attempt to place the minor with an adult relative of the minor, an adult person who cares for the child or another adult person who is known to the child.

Penalties.

A. Responsible Adult’s First Violation – Warning. In the case of a first violation by a minor, the Police Chief shall, by certified mail, send to the adult responsible for the minor, written notice of the violation with a warning that any subsequent violation will result in full enforcement of the curfew ordinance against both the responsible adult and minor, with applicable penalties.

B. Responsible Adult’s Second Violation – Simple Misdemeanor. Any responsible adult as defined in this section who, following receipt of a warning, knowingly allows the minor to violate any of the provisions of this section is guilty of a simple misdemeanor.

C. Minor’s First Violation – Warning. In the case of a first violation by a minor, the peace officer shall give the minor a written warning, which states that any subsequent violation will result in full enforcement of the curfew ordinance against the responsible adult and the minor, with applicable penalties.

D. Minor’s Second Violation – Simple Misdemeanor. For the minor’s second and subsequent violations of any of the provisions of this section, the minor is guilty of a simple misdemeanor.
E. Upon conviction, the person shall be punished by a fine or community service as ordered by the Court.

7. Notice. Notice of the ordinance codified in this section and its contents may be posted in or about such public or quasi-public places as may be designated by the Council or the Police Department in order that the public may be constantly informed of the existence of such ordinance and its regulations.

46.02 CIGARETTES AND TOBACCO. It is unlawful for any person under eighteen (18) years of age to smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes. Possession of tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes by a person under eighteen years of age shall not constitute a violation of this section if said person possesses the tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes as part of the person’s employment and said person is employed by a person who holds a valid permit under Chapter 453A of the Code of Iowa or who lawfully offers for sale or sells cigarettes or tobacco products.

(Code of Iowa, Sec. 453A.2)

46.03 CONTRIBUTING TO DELINQUENCY. It is unlawful for any person to encourage any child under eighteen (18) years of age to commit any act of delinquency.

(Code of Iowa, Sec. 709A.1)
CHAPTER 47
PARK REGULATIONS

47.01  Purpose. The purpose of this chapter is to facilitate the enjoyment of park facilities by the general public by establishing rules and regulations governing the use of park facilities.

(Code of Iowa, Sec. 364.12)

47.02  Use of Drives Required. No person shall drive any car, cycle or other vehicle, or ride or lead any horse, in any portion of a park except by authorization from the City.

47.03  Fires. No fires shall be built, except in a place provided therefor, and such fire shall be extinguished before leaving the area unless it is to be immediately used by some other party.

47.04  Littering. No person shall place, deposit, or throw any waste, refuse, litter or foreign substance in any area or receptacle except those provided for that purpose.

47.05  Alcoholic Beverages. The use, consumption or possession of alcoholic liquors or beer or wine in a park shall be permitted only upon approval of the Police Chief.

47.06  Tobacco Use. The use of tobacco is not permitted in City parks.

47.07  Skateboards. Use of skateboards on any area of the City park is prohibited.
CHAPTER 48
GARNAVILLO COMMUNITY CENTER REGULATIONS

48.01 Purpose
48.02 Littering
48.03 Alcoholic Beverages
48.04 Tobacco Use

48.01 PURPOSE. The purpose of this chapter is to facilitate the enjoyment of the Community Center by the general public by establishing rules and regulations governing the use of the Community Center facilities.

(Code of Iowa, Sec. 364.12)

48.02 LITTERING. No person shall place, deposit, or throw any waste, refuse, litter or foreign substance in any area or receptacle except those provided for that purpose.

48.03 ALCOHOLIC BEVERAGES. The use, consumption or possession of beer in the Community Center shall be permitted subject to conditions of the rental agreement. A person shall not use or consume alcoholic liquor or wine in the Community Center.

(Ord. 03-2011 – Sep. 12 Supp.)

48.04 TOBACCO USE. The use of tobacco is not permitted in the Community Center.
CHAPTER 50

NUISANCE ABATEMENT PROCEDURE

50.01  DEFINITION OF NUISANCE. Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property so as essentially to interfere unreasonably with the comfortable enjoyment of life or property is a nuisance.

(Code of Iowa, Sec. 657.1)

50.02  NUISANCES ENUMERATED. The following subsections include, but do not limit, the conditions which are deemed to be nuisances in the City:

(Code of Iowa, Sec. 657.2)

1. Offensive Smells. Erecting, continuing or using any building or other place for the exercise of any trade, employment or manufacture, which, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort or property of individuals or the public.

2. Filth or Noisome Substance. Causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.

3. Impeding Passage of Navigable River. Obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.

4. Water Pollution. Corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

5. Blocking Public and Private Ways. Obstructing or encumbering, by fences, buildings or otherwise, the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.

6. Billboards. Billboards, signboards and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard or alley or of a railroad or street railway track as to render dangerous the use thereof. (See also Section 62.06)

7. Storing of Flammable Junk. Depositing or storing of flammable junk, such as old rags, rope, cordage, rubber, bones and paper, by dealers in such articles within the fire limits of the City, unless in a building of fireproof construction. (See also Chapter 51)

8. Air Pollution. Emission of dense smoke, noxious fumes, or fly ash.

9. Weeds, Brush. Dense growth of all weeds, vines, brush, or other vegetation in the City so as to constitute a health, safety, or fire hazard.
10. Tree Disease. Trees infected with disease. (See also Chapter 151)

11. Airport Air Space. Any object or structure hereafter erected within one thousand (1,000) feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

12. Houses of Ill Fame. Houses of ill fame, kept for the purpose of prostitution and lewdness; gambling houses; places resorted to by persons participating in criminal gang activity prohibited by Chapter 723A of the Code of Iowa or places resorted to by persons using controlled substances, as defined in Section 124.101 of the Code of Iowa, in violation of law, or houses where drunkenness, quarreling, fighting or breaches of the peace are carried on or permitted to the disturbance of others.

50.03 OTHER CONDITIONS. The following chapters of this Code of Ordinances contain regulations prohibiting or restricting other conditions which are deemed to be nuisances:

1. Junk and Junk Vehicles (See Chapter 51)
2. Dangerous Buildings (See Chapter 145)
3. Storage and Disposal of Solid Waste (See Chapter 105)
4. Trees (See Chapter 151)

50.04 NUISANCES PROHIBITED. The creation or maintenance of a nuisance is prohibited, and a nuisance, public or private, may be abated in the manner provided for in this chapter or State law.

(Code of Iowa, Sec. 657.3)

50.05 NUISANCE ABATEMENT. Whenever any authorized municipal officer finds that a nuisance exists, such officer has the authority to determine on a case-by-case basis whether to utilize the nuisance abatement procedure described in Section 50.06 of this chapter or the municipal infraction procedure referred to in Section 50.07.

(Code of Iowa, Sec. 364.12[3h])

50.06 ABATEMENT OF NUISANCE BY WRITTEN NOTICE. Any nuisance, public or private, may be abated in the manner provided for in this section:

(Code of Iowa, Sec. 364.12[3h])

1. Contents of Notice to Property Owner. The notice to abate shall contain: †
   
   A. Description of Nuisance. A description of what constitutes the nuisance.
   
   B. Location of Nuisance. The location of the nuisance.

† EDITOR’S NOTE: A suggested form of notice for the abatement of nuisances is included in the Appendix of this Code of Ordinances. Caution is urged in the use of this administrative abatement procedure, particularly where cost of abatement is more than minimal or where there is doubt as to whether or not a nuisance does in fact exist. If compliance is not secured following notice and hearings, we recommend you review the situation with your attorney before proceeding with abatement and assessment of costs. Your attorney may recommend proceedings in court under Chapter 657 of the Code of Iowa rather than this procedure.
C. Acts Necessary to Abate. A statement of the act or acts necessary to abate the nuisance.

D. Reasonable Time. A reasonable time within which to complete the abatement.

E. Assessment of City Costs. A statement that if the nuisance or condition is not abated as directed and no request for hearing is made within the time prescribed, the City will abate it and assess the costs against the property owner.

2. Method of Service. The notice may be in the form of an ordinance or sent by certified mail to the property owner.

(\textit{Code of Iowa, Sec. 364.12[3h]})

3. Request for Hearing. Any person ordered to abate a nuisance may have a hearing with the Council as to whether a nuisance exists. A request for a hearing must be made in writing and delivered to the Clerk within the time stated in the notice, or it will be conclusively presumed that a nuisance exists and it must be abated as ordered. The hearing will be before the Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a reasonable time under the circumstances.

4. Abatement in Emergency. If it is determined that an emergency exists by reason of the continuing maintenance of the nuisance or condition, the City may perform any action which may be required under this chapter without prior notice. The City shall assess the costs as provided in subsection 6 of this section after notice to the property owner under the applicable provisions of subsection 1 and 2, and the hearing as provided in subsection 3.

(\textit{Code of Iowa, Sec. 364.12[3h]})

5. Abatement by City. If the person notified to abate a nuisance or condition neglects or fails to abate as directed, the City may perform the required action to abate, keeping an accurate account of the expense incurred. The itemized expense account shall be filed with the Clerk, who shall pay such expenses on behalf of the City.

(\textit{Code of Iowa, Sec. 364.12[3h]})

6. Collection of Costs. The Clerk shall send a statement of the total expense incurred by certified mail to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one month, the Clerk shall certify the costs to the County Treasurer and such costs shall then be collected with, and in the same manner as, general property taxes.

(\textit{Code of Iowa, Sec. 364.12[3h]})

7. Installment Payment of Cost of Abatement. If the amount expended to abate the nuisance or condition exceeds five hundred dollars ($500.00), the City may permit the assessment to be paid in up to ten (10) annual installments, to be paid in the same manner and with the same interest rates provided for assessments against benefited property under State law.

(\textit{Ord. 12-2012 – Sep. 12 Supp.})

(\textit{Code of Iowa, Sec. 364.13})

8. Failure to Abate. Any person causing or maintaining a nuisance who shall fail or refuse to abate or remove the same within the reasonable time required and specified in the notice to abate is in violation of this Code of Ordinances.
50.07 MUNICIPAL INFRACTION ABATEMENT PROCEDURE. In lieu of the abatement procedures set forth in Section 50.06, the requirements of this chapter may be enforced under the procedures applicable to municipal infractions as set forth in Chapter 3 of this Code of Ordinances.
CHAPTER 51

JUNK AND JUNK VEHICLES

51.01 DEFINITIONS. For use in this chapter, the following terms are defined:

1. “Junk” means all old or scrap copper, brass, lead, or any other non-ferrous metal; old or discarded rope, rags, batteries, paper, trash, rubber, debris, waste or used lumber, or salvaged wood; dismantled vehicles, machinery and appliances or parts of such vehicles, machinery or appliances; iron, steel or other old or scrap ferrous materials; old or discarded glass, tinware, plastic or old or discarded household goods or hardware. Neatly stacked firewood located on a side yard or a rear yard is not considered junk.

2. “Junk vehicle” means any vehicle legally placed in storage with the County Treasurer or unlicensed and which has any of the following characteristics:
   A. Broken Glass. Any vehicle with a broken or cracked windshield, window, headlight or tail light, or any other cracked or broken glass.
   B. Broken, Loose or Missing Part. Any vehicle with a broken, loose or missing fender, door, bumper, hood, steering wheel or trunk lid.
   C. Habitat for Nuisance Animals or Insects. Any vehicle which has become the habitat for rats, mice, or snakes, or any other vermin or insects.
   D. Flammable Fuel. Any vehicle which contains gasoline or any other flammable fuel.
   E. Inoperable. Any motor vehicle which lacks an engine or two or more wheels or other structural parts, rendering said motor vehicle totally inoperable, or which cannot be moved under its own power or has not been used as an operating vehicle for a period of thirty (30) days or more.
   F. Defective or Obsolete Condition. Any other vehicle which, because of its defective or obsolete condition, in any other way constitutes a threat to the public health and safety.

Mere licensing of such vehicle shall not constitute a defense to the finding that the vehicle is a junk vehicle.

3. “Vehicle” means every device in, upon, or by which a person or property is or may be transported or drawn upon a highway or street, excepting devices moved by human power or used exclusively upon stationary rails or tracks, and includes without limitation a motor vehicle, automobile, truck, motorcycle, tractor, buggy, wagon, farm machinery, or any combination thereof.

51.02 JUNK AND JUNK VEHICLES PROHIBITED. It is unlawful for any person to store, accumulate, or allow to remain on any private property within the corporate limits of the City any junk or junk vehicle.
51.03  **JUNK AND JUNK VEHICLES A NUISANCE.** It is hereby declared that any junk or junk vehicle located upon private property, unless excepted by Section 51.04, constitutes a threat to the health and safety of the citizens and is a nuisance within the meaning of Section 657.1 of the Code of Iowa. If any junk or junk vehicle is kept upon private property in violation hereof, the owner of or person occupying the property upon which it is located shall be prima facie liable for said violation.

(Code of Iowa, Sec. 364.12[3a])

51.04  **EXCEPTIONS.** The provisions of this chapter do not apply to any junk or a junk vehicle stored within a garage or other enclosed structure.

51.05  **NOTICE TO ABATE.** Upon discovery of any junk or junk vehicle located upon private property in violation of Section 51.03, the City shall within five (5) days initiate abatement procedures as outlined in Chapter 50 of this Code of Ordinances.

(Code of Iowa, Sec. 364.12[3a])
CHAPTER 52

GRASS AND WEEDS

52.01 Purpose. The purpose of this section is to establish a maximum height that grass and weeds on lands within the City may be grown before the grass and weeds must be cut.

52.02 Height of Grass and Weeds. Grass and weeds growing on lands within the City shall be cut on a periodic basis so that the height of such grass and weeds is never greater than ten (10) inches in height.

52.03 Violation. Upon the determination by the designated municipal officer by visual observation and measurement that a violation of this section has occurred, the City shall send written notice by certified mail to the landowner informing said owner of the problem and the action that is to be taken.

52.04 Notice. The notice shall set forth that the property owner has seven (7) days from the date of the notice to have the grass and weeds cut so that the height conforms to this chapter. The notice shall set forth the address of the property in question and will instruct the landowner that this notice constitutes notice for the balance of the calendar year that further action will be taken by the City to remedy the problem if it occurs again on the same property without additional written notice being given.

52.05 Failure to Cut Grass and Weeds. If any such owner, who has been sent notice, fails to cut the grass and weeds on said owner’s property as set forth in the notice so that it conforms to this chapter within the time period set forth in the notice, the City will mow the grass and weeds so that the property conforms to this chapter. The cost of this action shall be assessed against the property for collection in the same manner as property taxes. The fee for this service shall be set by resolution.

52.06 Collection of Charges. The City Clerk shall mail a statement of the total expense incurred to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within thirty (30) days, the City Clerk shall certify the costs to the County Treasurer and they shall then be collected in the same manner as general property taxes.

(Code of Iowa, Sec. 364.12[3][h])

52.07 Additional Violation. Any landowner who violates this chapter shall be given one notice per summer and the City shall be authorized to respond to additional violations without additional written notice being given.

52.08 Exceptions. This chapter pertains to all residential, commercial and industrial
land within the City limits, but excludes agricultural land within the City or land being used as agricultural use.

(Ch. 52 – Ord. 05-2014 – Nov. 14 Supp.)

[The next page is 275]
CHAPTER 55
ANIMAL PROTECTION AND CONTROL

55.01 DEFINITIONS. The following terms are defined for use in this chapter.

1. “Advertise” means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag or articulation.

2. “Animal” means a nonhuman vertebrate.
   (Code of Iowa, Sec. 717B.1)

3. “At large” means off the premises of the owner and not under the control of a competent person, restrained within a motor vehicle, or housed in a veterinary hospital or kennel.

4. “Business” means any enterprise relating to any of the following:
   A. The sale or offer for sale of goods or services.
   B. A recruitment for employment or membership in an organization.
   C. A solicitation to make an investment.
   D. An amusement or entertainment activity.

5. “Fair” means any of the following:
   A. The annual fair and exposition held by the Iowa State Fair Board pursuant to Chapter 173 of the Code of Iowa or any fair event conducted by a fair under the provisions of Chapter 174 of the Code of Iowa.
   B. An exhibition of agricultural or manufactured products.
   C. An event for operation of amusement rides or devices or concession booths.

6. “Game” means a “game of chance” or “game of skill” as defined in Section 99B.1 of the Code of Iowa.

7. “Livestock” means an animal belonging to the bovine, caprine, equine, ovine or porcine species, ostriches, rheas and emus; farm deer as defined in Section 170.1 of the Code of Iowa; or poultry.
   (Code of Iowa, Sec. 717.1)

8. “Owner” means any person owning, keeping, sheltering or harboring an animal.
9. “Pet” means a living dog, cat, or an animal normally maintained in a small tank or cage in or near a residence, including but not limited to a rabbit, gerbil, hamster, mouse, parrot, canary, mynah, finch, tropical fish, goldfish, snake, turtle, gecko, or iguana.

10. “Dangerous animal” means (1) any animal that is not naturally tame or gentle and which is of a wild nature or disposition, and which is capable of killing, inflicting serious injury upon, or causing disease among, human beings or domestic animals and having known tendencies as a species to do so; (2) any animal that has previously attacked a pet or human; (3) any animal(s) declared to be dangerous by the City Council; (4) the following shall be deemed to be a “dangerous animal” per se:
   A. Lions, tigers, jaguars, leopards, cougars, lynx and bobcats;
   B. Wolves, coyotes and foxes;
   C. Badgers, wolverines, weasels, skunk and mink;
   D. Raccoons and opossums;
   E. Bears;
   F. Monkey and chimpanzees;
   G. Bats;
   H. Alligators and crocodiles;
   I. Scorpions;
   J. Snakes that are venomous or constrictors;
   K. Gila monsters;
   L. Bees.

(Code of Iowa, Sec. 717B.3)

55.02 ANIMAL NEGLECT. It is unlawful for a person who impounds or confines, in any place, an animal, excluding livestock, to fail to supply the animal during confinement with a sufficient quantity of food or water, or to fail to provide a confined dog or cat with adequate shelter, or to torture, deprive of necessary sustenance, mutilate, beat, or kill such animal by any means which causes unjustified pain, distress or suffering.

(Code of Iowa, Sec. 717B.8)

55.03 LIVESTOCK NEGLECT. It is unlawful for a person who impounds or confines livestock in any place to fail to provide the livestock with care consistent with customary animal husbandry practices or to deprive the livestock of necessary sustenance or to injure or destroy livestock by any means which causes pain or suffering in a manner inconsistent with customary animal husbandry practices.

(Code of Iowa, Sec. 717.2)

55.04 ABANDONMENT OF CATS AND DOGS. A person who has ownership or custody of a cat or dog shall not abandon the cat or dog, except the person may deliver the cat or dog to another person who will accept ownership and custody or the person may deliver the cat or dog to an animal shelter or pound.

(Code of Iowa, Sec. 717B.8)
55.05 **LIVESTOCK.** It is unlawful for a person to keep livestock within the City except by written consent of the Council or except in compliance with the City’s zoning regulations.

55.06 **AT LARGE PROHIBITED.** It is unlawful for any owner to allow an animal to run at large within the corporate limits of the City.

55.07 **DAMAGE OR INTERFERENCE.** It is unlawful for the owner of an animal to allow or permit such animal to pass upon the premises of another thereby causing damage to, or interference with, the premises.

55.08 **ANNOYANCE OR DISTURBANCE.** It is unlawful for the owner of a dog to allow or permit such dog to cause serious annoyance or disturbance to any person or persons by frequent and habitual howling, yelping, barking, or otherwise; or, by running after or chasing persons, bicycles, automobiles or other vehicles.

55.09 **DANGEROUS AND VIOLENT ANIMALS.** It is unlawful for any person to harbor or keep a dangerous or vicious animal within the City. A animal is deemed vicious when it has attacked or bitten any person without provocation, or when propensity to attack or bite persons exists and is known or ought reasonably to be known to the other owner.

55.10 **RABIES VACCINATION.** Every owner of a dog shall obtain a rabies vaccination for such animal. It is unlawful for any person to own or have a dog in said person’s possession, six months of age or over, which has not been vaccinated against rabies. Dogs kept in State or Federally licensed kennels and not allowed to run at large are not subject to these vaccination requirements.

55.11 **OWNER’S DUTY.** It is the duty of the owner of any dog, cat or other animal which has bitten or attacked a person or any person having knowledge of such bite or attack to report this act to a local health or law enforcement official. It is the duty of physicians and veterinarians to report to the local board of health the existence of any animal known or suspected to be suffering from rabies.

55.12 **CONFINEMENT.** If a local board of health receives information that an animal has bitten a person or that a dog or animal is suspected of having rabies, the board shall order the owner to confine such animal in the manner it directs. If the owner fails to confine such animal in the manner directed, the animal shall be apprehended and impounded by such board, and after ten (10) days the board may humanely destroy the animal. If such animal is returned to its owner, the owner shall pay the cost of impoundment. This section does not apply if a police service dog or a horse used by a law enforcement agency and acting in the performance of its duties has bitten a person.

55.13 **AT LARGE: IMPOUNDMENT.**

1. Animals found at large in violation of this chapter shall be seized and impounded at the impoundment facilities utilized by the City, or at the discretion of the peace officer, the owner may be served a summons to appear before a proper court to answer charges made thereunder.
2. Pet owners that have their animals seized will be invoiced for charges in relation to the seizure as follows:

A. There will be a $25.00 minimum charge for each seized animal.

B. There will be an additional charge of $6.00 per one-fourth hour (15 minutes) from the time it takes to seize the animal(s) and take it to the impoundment facility until the time City staff reports back to City Hall after turning the animal over to the impoundment facility.

C. Mileage set at the current IRS rate will be charged for all miles driven to seize the animal, take it to the impoundment facility, and return to City Hall.

D. All animal seizure fees will be sent to the pet owner by regular mail or delivered by City staff. All fees are due within thirty (30) days of the invoice date. If fees are not paid within thirty (30) days, the unpaid and delinquent fees shall constitute a lien upon the pet owner’s property and shall be certified by the Clerk to the County Treasurer for collection in the same manner as property taxes.

(Ord. 01-2012 – Sep. 12 Supp.)

55.14 DISPOSITION OF ANIMALS. When an animal has been apprehended and impounded, written notice shall be provided to the owner within two (2) days after impoundment, if the owner’s name and current address can reasonably be determined by accessing a tag or other device that is on or part of the animal. Impounded animals may be recovered by the owner upon payment of impounding costs, and if an unvaccinated dog, by having it immediately vaccinated. If the owner fails to redeem the animal within seven (7) days from the date that the notice is mailed, or if the owner cannot be located within seven days, the animal shall be disposed of in accordance with law or destroyed by euthanasia.

(Code of Iowa, Sec. 351.37, 351.41)

55.15 IMPOUNDING COSTS. Impounding costs are those set by the impoundment facility.

55.16 CLEANING UP AFTER ANIMALS. It is the duty of every person owning or having custody or control of an animal to clean up and remove the feces deposited by such animal at all times when said animal is not on the owner’s premises. Such animal feces shall be disposed of in a sanitary manner.

55.17 PET AWARDS PROHIBITED.

(Code of Iowa, Ch. 717.E)

1. Prohibition. It is unlawful for any person to award a pet or advertise that a pet may be awarded as any of the following:

A. A prize for participating in a game.

B. A prize for participating in a fair.

C. An inducement or condition for visiting a place of business or attending an event sponsored by a business.

D. An inducement or condition for executing a contract which includes provisions unrelated to the ownership, care or disposition of the pet.
2. Exceptions. This section does not apply to any of the following:

A. A pet shop licensed pursuant to Section 162.5 of the Code of Iowa if the award of a pet is provided in connection with the sale of a pet on the premises of the pet shop.

B. Youth programs associated with 4-H Clubs; Future Farmers of America; the Izaak Walton League of America; or organizations associated with outdoor recreation, hunting or fishing, including but not limited to the Iowa Sportsmen’s Federation.

55.18 PENALTIES. Any violation of this chapter shall be deemed to be a municipal infraction, subject to such penalties as provided by the Iowa Code Section 364.22 and Chapter 3 of the Code of Ordinances of Garnavillo, Iowa.  

(Ord. 09-2012 – Sep. 12 Supp.)
CHAPTER 56

URBAN CHICKENS

56.01 Purpose. The purpose of this chapter is to permit urban chickens in the City of Garnavillo.

56.02 Definitions. For use in this chapter the following defined terms shall apply:

1. Chicken – shall mean a member of the subspecies Gallus gallus domesticus, a domesticated fowl.

2. Urban Chicken – shall mean a check kept on a permitted tract of land pursuant to a permit issued under this chapter.

3. Permitted Tract of Land – shall mean the tract of land as identified by the application upon which a permit is granted for keeping chickens pursuant to this chapter.

4. Permittee – shall mean an applicant who has been granted a permit to raise, harbor or keep chickens pursuant to this chapter.

56.03 Permit Required.

1. Permit Required. No person shall raise, harbor or keep chickens within the City of Garnavillo without a valid permit obtained from the City Council under the provisions of this chapter.

2. Application. In order to obtain a permit, an applicant must submit a completed application on forms provided by the City Clerk and payment of all fees required by this chapter.

3. Requirements. The requirement to the receipt of a permit include:

   A. All requirements of this chapter are met;

   B. All fees, as may be provided for from time to time by City Council resolution, for the permit are paid in full;

   C. All judgments in the City’s favor and against the applicant have been paid in full;

   D. Written approval forms from all residents adjacent of the tract of land included in the application.

   E. If the applicant is a renter, he/she must obtain written permission from landlord/property owner prior to any permit being issued.
56.04 **ISSUANCE OF PERMIT.**

1. **Issuance of Permit.** If the City Council concludes as a result of the information contained in the application that the requirements for a permit have been met the City Clerk shall issue the permit.

2. **Renewal of Permit.** A Permittee shall apply to renew his permit every twelve (12) months.

3. **Denial, Suspension, Revocation Non-renewal.** The Council’s appointed designee, may deny, suspend, revoke, or decline to renew any permit issued for any of the following grounds:
   
   A. False statements on any application or other information or report required by this section to be given by the applicants;
   
   B. Failure to pay any application, penalty, re-inspection or reinstatement fee required by this section or City Council resolution;
   
   C. Failure to correct deficiencies noted in abatement notices in the time specified in the notice;
   
   D. Failure to comply with the provisions of an approved mitigation/remediation plan by the City County;
   
   E. Failure to comply with any provision of this chapter.

4. **Notification.** A decision to revoke, suspend, deny or not renew a permit shall be in writing, delivered by ordinary mail or in person to the address indicated on the application. The notification shall specify reason for action.

5. **Effect of Revocation.** When an application for a permit is denied, or when a permit is revoked, the applicant may not re-apply for a new permit for a period of one (1) year from the date of the denial or revocation.

6. **Appeals.** No permit may be denied, suspended, revoked, or not renewed without notice and an opportunity to be heard is given the applicant or holder of the permit. In any instance where the City Council designee has denied, revoked, suspended, or not renewed a permit, the applicant or holder of said permit may appeal the decision to the City Council within ten (10) business days of receipt by the applicant or holder of the permit of the notice of the decision. The applicant or holder of the permit will be given an opportunity for a hearing. The decisions of the City Council hearing the appeal, or any decision by the City Council designee which is not appealed in accordance to this chapter shall be deemed final action.

56.05 **NUMBER AND TYPE OF CHICKENS ALLOWED.**

1. The maximum number of chickens allowed is six (6) per tract of land.

2. Only female chickens (hens) are allowed.

3. In no case shall a permit be granted for greater than six (6) chickens.

56.06 **TRACT OF LAND ALLOWED.** Permits will be granted only for tracts of land located in residential and agricultural districts as identified in the Code of Ordinances for the City of Garnavillo.
56.07 NON-COMMERCIAL USE ONLY. A Permit shall not allow the Permittee to engage in chicken breeding or fertilizer production for commercial purposes.

56.08 ENCLOSURES.

1. Chickens must be kept in an enclosure of sturdy wire fencing at all times. Chickens shall be secured within a henhouse or chicken tractor during non-daylight hours.

2. Enclosures must be kept in a clean, dry, odor-free, neat & sanitary condition at all times.

3. Henhouses, chicken tractors and chicken pens must provide adequate ventilation and adequate sun and shade and must be impermeable to rodents, wild birds and predators, including dogs and cats.
   A. Henhouse and chicken tractors:
      (1) Henhouses and chicken tractors shall be designed to provide safe and healthy living conditions for the chickens with a minimum of four (4) square feet per bird while minimizing adverse impacts to other residents in the neighborhood.
   B. A henhouse or chicken tractor shall be enclosed on all sides and shall have a roof and doors. Access doors must be able to be shut and locked at night. Opening windows and vents must be covered with predator and bird proof wire of less than one (1) inch openings.
   C. The materials used in making a henhouse or chicken tractor shall be uniform for each element of the structure such that the walls are made of the same material, the roof has the same shingles or other covering, and any windows or openings are constructed using the same materials. The use of scrap, waste board, sheet metal, or similar materials is prohibited. Henhouses and chicken tractors shall be well maintained.
   D. Henhouses, chicken tractors and chicken pens shall only be located in the rear yard required by Garnavillo Municipal Code unless the setback requirements cannot be met, in which case they may be kept in a side yard but within the required setbacks. No henhouse, chicken tractor, or chicken pen shall be allowed in any front yard.
   E. Henhouses, chicken tractors and chicken pens must conform to existing City code pertaining to structures in the applicable zoned district.

56.09 ODOR AND NOISE IMPACTS.

1. Odors from chickens, chicken manure or other chicken related substances shall not be perceptible beyond the boundaries of the permitted tract of land.

2. Noise from chickens shall not be loud enough beyond the boundaries of the permitted tract of land at the property boundaries to disturb persons of reasonable sensitivity.

56.10 PREDATORS, RODENTS, INSECTS AND PARASITES. The Permittee shall take necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites. Chickens found to be infested with insects and parasites
that may result in unhealthy conditions to human habitation may be removed by a person designated by the Council with the assistance of City Policy, if necessary.

56.11 FEED AND WATER. Chickens shall be provided with access to feed and clean water at all times. The feed and water shall not be available to rodents, wild birds, and predators.

56.12 WASTE STORAGE AND REMOVAL. The henhouse, chicken tractor, chicken pen and surrounding area must be kept free from trash and accumulated droppings. Uneaten feed shall be removed in a timely manner.

56.13 CHICKENS AT LARGE. The Permittee shall not allow the Permittee’s chickens to roam off the permitted tract of land. No dog or cat or other domesticated animal which kills a chicken off the permitted tract of land will, for that reason alone, be considered a dangerous or aggressive animal or the City’s responsibility to enforce its animal control provisions.

56.14 UNLAWFUL ACTS.

1. It shall be unlawful for any person to keep chicken in violation of any provision of this chapter or any other provision of the Garnavillo Municipal Code.  
2. It shall be unlawful for any owner, renter or lease holder of property to allow chickens to be kept on the property in violation of the provisions of this article.  
3. No person shall keep chickens inside a single family dwelling unit, multi-family dwelling unit(s) or rental unit.  
4. No person shall slaughter any chickens within the City of Garnavillo.  
5. No person shall keep a rooster.  
6. No person shall keep chickens on a vacant or uninhabited tract of land.

56.15 NUISANCES. Any violation of the terms of this chapter that constitutes a health hazard or that interferes with the use or enjoyment of neighboring property is a nuisance and may be abated under the general nuisance abatement provision of Garnavillo Municipal Code.

(Ch. 56 – Ord. 04-2014 – Nov. 14 Supp.)

[The next page is 301]
CHAPTER 60
ADMINISTRATION OF TRAFFIC CODE

60.01 TITLE. Chapters 60 through 70 of this Code of Ordinances may be known and cited as the “Garnavillo Traffic Code.”

60.02 DEFINITIONS. Where words and phrases used in the Traffic Code are defined by State law, such definitions apply to their use in said Traffic Code and are adopted by reference. Those definitions so adopted that need further definition or are reiterated, and other words and phrases used herein, have the following meanings:

(Code of Iowa, Sec. 321.1)

1. “Business District” means the territory contiguous to and including the following designated streets:
   
   Main Street from the northern corporate line to the southern corporate line

2. “Park” or “parking” means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

3. “Peace officer” means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

4. “Residence district” means the territory contiguous to and including a highway not comprising a business, suburban or school district, where forty percent (40%) or more of the frontage on such a highway for a distance of three hundred (300) feet or more is occupied by dwellings or by dwellings and buildings in use for business.

5. “School district” means the territory contiguous to and including a highway for a distance of two hundred (200) feet in either direction from a school house.

6. “Stand” or “standing” means the halting of a vehicle, whether occupied or not, otherwise than for the purpose of and while actually engaged in receiving or discharging passengers.

7. “Stop” means when required, the complete cessation of movement.

8. “Stop” or “stopping” means when prohibited, any halting of a vehicle, even momentarily, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control sign or signal.

9. “Suburban district” means all other parts of the City not included in the business, school or residence districts.
10. “Traffic control device” means all signs, signals, markings, and devices not inconsistent with this chapter, lawfully placed or erected for the purpose of regulating, warning, or guiding traffic.

11. “Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, street, or alley.

60.03 ADMINISTRATION AND ENFORCEMENT. Provisions of this Traffic Code and State law relating to motor vehicles and law of the road are enforced by the Police Chief.

(Code of Iowa, Sec. 372.13 [4])

60.04 POWER TO DIRECT TRAFFIC. A peace officer, and, in the absence of a peace officer, any officer of the fire department when at the scene of a fire, is authorized to direct all traffic by voice, hand or signal in conformance with traffic laws. In the event of an emergency, traffic may be directed as conditions require, notwithstanding the provisions of the traffic laws.

(Code of Iowa, Sec. 102.4 & 321.236[2])

60.05 TRAFFIC ACCIDENTS: REPORTS. The driver of a vehicle involved in an accident within the limits of the City shall file a report as and when required by the Iowa Department of Transportation. A copy of this report shall be filed with the City for the confidential use of peace officers and shall be subject to the provisions of Section 321.271 of the Code of Iowa.

(Code of Iowa, Sec. 321.273 & 321.274)

60.06 PEACE OFFICER’S AUTHORITY. A peace officer is authorized to stop a vehicle to require exhibition of the driver’s license of the driver, to serve a summons or memorandum of traffic violation, to inspect the condition of the vehicle, to inspect the vehicle with reference to size, weight, cargo, log book, bills of lading or other manifest of employment, tires and safety equipment, or to inspect the registration certificate, the compensation certificate, travel order, or permit of such vehicle. A peace officer having probable cause to stop a vehicle may require exhibition of the proof of financial liability coverage card issued for the vehicle.

(Code of Iowa, Sec. 321.492)

60.07 OBEDIENCE TO PEACE OFFICERS. No person shall willfully fail or refuse to comply with any lawful order or direction of any peace officer invested by law with authority to direct, control, or regulate traffic.

(Code of Iowa, Sec. 321.229)

60.08 PARADES REGULATED. No person shall conduct or cause any parade on any street except as provided herein:

1. “Parade” Defined. “Parade” means any march or procession of persons or vehicles organized for marching or moving on the streets in an organized fashion or manner or any march or procession of persons or vehicles represented or advertised to the public as a parade.

2. Permit Required. No parade shall be conducted without first obtaining permission from the City and applicable IDOT and County agencies written permits. Such permit shall state the time and date for the parade to be held and the streets or general route therefor. Such written permit granted to the person organizing or sponsoring the parade shall be permission for all participants therein to parade when such participants have been invited by the permittee to participate therein.
3. Parade Not A Street Obstruction. Any parade for which a permit has been issued as herein required, and the persons lawfully participating therein, shall not be deemed an obstruction of the streets notwithstanding the provisions of any other ordinance to the contrary.

4. Control by Police and Firefighters. Persons participating in any parade shall at all times be subject to the lawful orders and directions in the performance of their duties of law enforcement personnel and members of the Fire Department.
CHAPTER 61

TRAFFIC CONTROL DEVICES

61.01 INSTALLATION. The Police Chief shall cause to be placed and maintained traffic control devices when and as required under this Traffic Code or under State law or emergency or temporary traffic control devices for the duration of an emergency or temporary condition as traffic conditions may require to regulate, guide or warn traffic. The Police Chief shall keep a record of all such traffic control devices.

(Code of Iowa, Sec. 321.255)

61.02 CROSSWALKS. The Police Chief is hereby authorized, subject to approval of the Council by resolution, to designate and maintain crosswalks by appropriate traffic control devices at intersections where, due to traffic conditions, there is particular danger to pedestrians crossing the street or roadway, and at such other places as traffic conditions require.


61.03 TRAFFIC LANES. The Police Chief is hereby authorized to mark lanes for traffic on street pavements at such places as traffic conditions require, consistent with the traffic code of the City. Where such traffic lanes have been marked, it shall be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement.


61.04 STANDARDS. Traffic control devices shall comply with standards established by The Manual of Uniform Traffic Control Devices for Streets and Highways.

(Code of Iowa, Sec. 321.255)

61.05 COMPLIANCE. No driver of a vehicle shall disobey the instructions of any official traffic control device placed in accordance with the provisions of this chapter, unless at the time otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle under Section 321.231 of the Code of Iowa.

(Code of Iowa, Sec. 321.256)
CHAPTER 62

GENERAL TRAFFIC REGULATIONS

62.01 VIOLATION OF REGULATIONS. Any person who willfully fails or refuses to comply with any lawful order of a peace officer or direction of a Fire Department officer during a fire, or who fails to abide by the applicable provisions of the following Iowa statutory laws relating to motor vehicles and the statutory law of the road is in violation of this section. These sections of the Code of Iowa are adopted by reference and are as follows:

1. Section 321.17 – Misdemeanor to violate registration provisions.
2. Section 321.32 – Registration card, carried and exhibited; exception.
5. Section 321.57 – Operation under special plates.
6. Section 321.67 – Certificate of title must be executed.
7. Section 321.78 – Injuring or tampering with vehicle.
8. Section 321.79 – Intent to injure.
9. Section 321.91 – Penalty for abandonment.
10. Section 321.98 – Operation without registration.
12. Section 321.104 – Penal offenses against title law.
13. Section 321.115 – Antique vehicles; model year plates permitted.
17. Section 321.180B – Graduated driver’s licenses for persons aged fourteen through seventeen.
19. Section 321.194 – Special minor’s licenses.
22. Section 321.216B – Use of driver’s license or nonoperator’s identification card by underage person to obtain alcohol.
23. Section 321.216C – Use of driver’s license or nonoperator’s identification card by underage person to obtain cigarettes or tobacco products.
24. Section 321.218 – Operating without valid driver’s license or when disqualified.
25. Section 321.219 – Permitting unauthorized minor to drive.
27. Section 321.221 – Employing unlicensed chauffeur.
28. Section 321.222 – Renting motor vehicle to another.
29. Section 321.223 – License inspected.
30. Section 321.224 – Record kept.
31. Section 321.231 – Authorized emergency vehicles and police bicycles.
32. Section 321.232 – Radar jamming devices; penalty.
33. Section 321.234 – Bicycles, animals, or animal-drawn vehicles.
34. Section 321.234A – All-terrain vehicles.
35. Section 321.235A – Electric personal assistive mobility devices.
36. Section 321.247 – Golf cart operation on City streets.
37. Section 321.257 – Official traffic control signal.
38. Section 321.259 – Unauthorized signs, signals or markings.
39. Section 321.260 – Interference with devices, signs or signals; unlawful possession.
40. Section 321.262 – Damage to vehicle.
41. Section 321.263 – Information and aid.
42. Section 321.264 – Striking unattended vehicle.
43. Section 321.265 – Striking fixtures upon a highway.
44. Section 321.266 – Reporting accidents.
45. Section 321.275 – Operation of motorcycles and motorized bicycles.
46. Section 321.276 – Use of electronic communication device while driving; text-messaging.
47. Section 321.277 – Reckless driving.
48. Section 321.277A – Careless driving.
49. Section 321.278 – Drag racing prohibited.
50. Section 321.281 – Actions against bicyclists.
51. Section 321.284 – Open container; drivers.
52. Section 321.284A – Open container; passengers.
53. Section 321.288 – Control of vehicle; reduced speed.
54. Section 321.295 – Limitation on bridge or elevated structures.
55. Section 321.297 – Driving on right-hand side of roadways; exceptions.
56. Section 321.298 – Meeting and turning to right.
57. Section 321.299 – Overtaking a vehicle.
58. Section 321.302 – Overtaking and passing.
59. Section 321.303 – Limitations on overtaking on the left.
60. Section 321.304 – Prohibited passing.
61. Section 321.306 – Roadways laned for traffic.
62. Section 321.307 – Following too closely.
63. Section 321.308 – Motor trucks and towed vehicles; distance requirements.
64. Section 321.309 – Towing; convoys; drawbars.
65. Section 321.310 – Towing four-wheel trailers.
66. Section 321.312 – Turning on curve or crest of grade.
67. Section 321.313 – Starting parked vehicle.
68. Section 321.314 – When signal required.
69. Section 321.315 – Signal continuous.
70. Section 321.316 – Stopping.
71. Section 321.317 – Signals by hand and arm or signal device.
72. Section 321.318 – Method of giving hand and arm signals.
73. Section 321.319 – Entering intersections from different highways.
74. Section 321.320 – Left turns; yielding.
75. Section 321.321 – Entering through highways.
76. Section 321.322 – Vehicles entering stop or yield intersection.
77. Section 321.323 – Moving vehicle backward on highway.
78. Section 321.323A – Approaching certain stationary vehicles.
79. Section 321.324 – Operation on approach of emergency vehicles.
80. Section 321.324A – Funeral processions.
82. Section 321.329 – Duty of driver; pedestrians crossing or working on highways.
83. Section 321.330 – Use of crosswalks.
84. Section 321.332 – White canes restricted to blind persons.
86. Section 321.340 – Driving through safety zone.
87. Section 321.341 – Obedience to signal of train.
88. Section 321.342 – Stop at certain railroad crossings; posting warning.
89. Section 321.343 – Certain vehicles must stop.
90. Section 321.344 – Heavy equipment at crossing.
91. Section 321.344B – Immediate safety threat; penalty.
93. Section 321.354 – Stopping on traveled way.
94. Section 321.359 – Moving other vehicle.
95. Section 321.362 – Unattended motor vehicle.
96. Section 321.363 – Obstruction to driver’s view.
97. Section 321.364 – Vehicles shipping food; preventing contamination by hazardous material.
98. Section 321.365 – Coastng prohibited.
99. Section 321.367 – Following fire apparatus.
100. Section 321.368 – Crossing fire hose.
101. Section 321.369 – Putting debris on highway.
102. Section 321.370 – Removing injurious material.
103. Section 321.371 – Clearing up wrecks.
104. Section 321.372 – School buses.
105. Section 321.381 – Movement of unsafe or improperly equipped vehicles.
107. Section 321.382 – Upgrade pulls; minimum speed.
108. Section 321.383 – Exceptions; slow vehicles identified.
109. Section 321.384 – When lighted lamps required.
110. Section 321.385 – Head lamps on motor vehicles.
111. Section 321.386 – Head lamps on motorcycles and motorized bicycles.
112. Section 321.387 – Rear lamps.
113. Section 321.388 – Illuminating plates.
115. Section 321.390 – Reflector requirements.
116. Section 321.392 – Clearance and identification lights.
117. Section 321.393 – Color and mounting.
118. Section 321.394 – Lamp or flag on projecting load.
120. Section 321.397 – Lamps on bicycles.
121. Section 321.398 – Lamps on other vehicles and equipment.
122. Section 321.402 – Spot lamps.
123. Section 321.403 – Auxiliary driving lamps.
124. Section 321.404 – Signal lamps and signal devices.
125. Section 321.404A – Light-restricting devices prohibited.
126. Section 321.405 – Self-illumination.
127. Section 321.408 – Back-up lamps.
128. Section 321.409 – Mandatory lighting equipment.
129. Section 321.415 – Required usage of lighting devices.
131. Section 321.418 – Alternate road-lighting equipment.
132. Section 321.419 – Number of driving lamps required or permitted.
133. Section 321.420 – Number of lamps lighted.
134. Section 321.421 – Special restrictions on lamps.
136. Section 321.423 – Flashing lights.
137. Section 321.430 – Brake, hitch, and control requirements.
138. Section 321.431 – Performance ability.
139. Section 321.432 – Horns and warning devices.
140. Section 321.433 – Sirens, whistles, and bells prohibited.
141. Section 321.434 – Bicycle sirens or whistles.
143. Section 321.437 – Mirrors.
144. Section 321.438 – Windshields and windows.
146. Section 321.440 – Restrictions as to tire equipment.
147. Section 321.441 – Metal tires prohibited.
148. Section 321.442 – Projections on wheels.
149. Section 321.444 – Safety glass.
150. Section 321.445 – Safety belts and safety harnesses; use required.
151. Section 321.446 – Child restraint devices.
152. Section 321.449 – Motor carrier safety regulations.
153. Section 321.450 – Hazardous materials transportation.
155. Section 321.455 – Projecting loads on passenger vehicles.
156. Section 321.456 – Height of vehicles; permits.
CHAPTER 62  GENERAL TRAFFIC REGULATIONS

62.02 PLAY STREETS DESIGNATED. The Mayor shall have authority to declare any street or part thereof a play street and cause to be placed appropriate signs or devices in the roadway indicating and helping to protect the same. Whenever authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or portion thereof except drivers of vehicles having business or whose residences are within such closed area, and then any said driver shall exercise the greatest care in driving upon any such street or portion thereof.

(Code of Iowa, Sec. 321.255)

62.03 VEHICLES ON SIDEWALKS. The driver of a vehicle shall not drive upon or within any sidewalk area except at a driveway.

62.04 CLINGING TO VEHICLE. No person shall drive a motor vehicle on the streets of the City unless all passengers of said vehicle are inside the vehicle in the place intended for their accommodation. No person riding upon any bicycle, coaster, roller skates, in-line skates, sled, or toy vehicle shall attach the same or himself or herself to any vehicle upon a roadway.

62.05 QUIET ZONES. Whenever authorized signs are erected indicating a quiet zone, no person operating a motor vehicle within any such zone shall sound the horn or other warning device of such vehicle except in an emergency.

62.06 OBSTRUCTING VIEW AT INTERSECTIONS. It is unlawful to allow any tree, hedge, billboard, or other object to obstruct the view of an intersection by preventing persons from having a clear view of traffic approaching the intersection from cross streets. Any such obstruction is deemed a nuisance and in addition to the standard penalty may be abated in the manner provided by Chapter 50 of this Code of Ordinances.

62.07 ENGINE BACK-PRESSURE BRAKES PROHIBITED. No person operating a motor vehicle within the City shall use an engine back-pressure braking system or mechanical exhaust device designed to aid in the braking or deceleration of the motor vehicle. The fine shall be set at $50.00 for first offense and $100.00 for second and each additional offense.

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CHAPTER 63
SPEED REGULATIONS

63.01 General

Every driver of a motor vehicle on a street shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface and width of the street and of any other conditions then existing, and no person shall drive a vehicle on any street at a speed greater than will permit said driver to bring it to a stop within the assured clear distance ahead, such driver having the right to assume, however, that all persons using said street will observe the law.

(Code of Iowa, Sec. 321.285)

63.02 State Code Speed Limits

The following speed limits are established in Section 321.285 of the Code of Iowa and any speed in excess thereof is unlawful unless specifically designated otherwise in this chapter as a special speed zone, or as otherwise posted as provided in Section 321.290.

1. Business District – twenty (20) miles per hour.
2. Residence or School District – twenty-five (25) miles per hour.
3. Suburban District – forty-five (45) miles per hour.

(Ord. 07-2011 – Sep. 12 Supp.)

63.03 Parks, Cemeteries and Parking Lots

A speed in excess of fifteen (15) miles per hour in any public park, cemetery or parking lot, unless specifically designated otherwise in this chapter, is unlawful.

(Code of Iowa, Sec. 321.236[5])

63.04 Special Speed Restrictions

In accordance with requirements of the Iowa Department of Transportation, or whenever the Council shall determine upon the basis of an engineering and traffic investigation that any speed limit listed in Section 63.02 is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the City street system, the Council shall determine and adopt by ordinance such higher or lower speed limit as it deems reasonable and safe at such location. The following special speed zones have been established:

(Code of Iowa, Sec. 321.290)

1. Special 15 MPH Speed Zones. A speed in excess of fifteen (15) miles per hour is unlawful in the school district when children are present.

2. Special 30 MPH Speed Zone. A speed in excess of thirty (30) miles per hour is unlawful on Main Street north of Watson Street as posted.

(Ord. 07-2011 – Sep. 12 Supp.)
63.05 MINIMUM SPEED. No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation, or in compliance with law.

(Code of Iowa, Sec. 321.294)

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CHAPTER 64

TURNING REGULATIONS

64.01 TURNING AT INTERSECTIONS. The driver of a vehicle intending to turn at an intersection shall do so as follows:

(Code of Iowa, Sec. 321.311)

1. Both the approach for a right turn and a right turn shall be made as close as practical to the right-hand curb or edge of the roadway.

2. Approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof and after entering the intersection the left turn shall be made so as to depart from the intersection to the right of the centerline of the roadway being entered.

3. Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection. A left turn from a one-way street into a two-way street shall be made by passing to the right of the centerline of the street being entered upon leaving the intersection.

The Police Chief may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct, as traffic conditions require, that a different course from that specified above be traveled by vehicles turning at intersections, and when markers, buttons or signs are so placed, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs.

64.02 U-TURNS. It is unlawful for a driver to make a U-turn except at an intersection; however, U-turns are prohibited within the Business District, at the following designated intersections and at intersections where there are automatic traffic signals.

(Code of Iowa, Sec. 321.236[9])

1. Main Street (U.S. No. 52) and its intersection with any street from the north corporate line to the south corporate line.

64.03 LEFT TURN FOR PARKING. No person shall make a left hand turn, crossing the centerline of the street, for the purpose of parking on said street.
CHAPTER 65

STOP OR YIELD REQUIRED

65.01 THROUGH STREETS – STOP. Every driver of a vehicle shall stop, unless a yield is permitted by this chapter, before entering an intersection with the following designated through streets.

(Code of Iowa, Sec. 321.345)
1. MAIN STREET, from the northernmost City limits to the southernmost City limits;
2. VAN BUREN STREET, from Main Street to the easternmost City limits;
3. CENTRE STREET, from Main Street to the westernmost City limits.

65.02 STOP REQUIRED. Every driver of a vehicle shall stop in accordance with the following:

(Code of Iowa, Sec. 321.345)
1. ADAMS COURT.
   A. Every vehicle traveling south on Adams Court shall stop at Industrial Road.
2. ADAMS STREET.
   A. Every vehicle traveling north on Adams Street shall stop at Mechanic Street;
   B. Every vehicle traveling north on Adams Street shall stop at Van Buren Street;
   C. Every vehicle traveling north on Adams Street shall stop at Niagara Street;
   D. Every vehicle traveling north on Adams Street shall stop at Centre Street;
   E. Every vehicle traveling north on Adams Street shall stop at Harrison Street;
   F. Every vehicle traveling south on Adams Street shall stop at Harrison Street;
   G. Every vehicle traveling south on Adams Street shall stop at Centre Street;
   H. Every vehicle traveling south on Adams Street shall stop at Niagara Street;
I. Every vehicle traveling south on Adams Street shall stop at Van Buren Street;

J. Every vehicle traveling south on Adams Street shall stop at Mechanic Street;

3. BENTON STREET.
   A. Every vehicle traveling north on Benton Street shall stop at Van Buren Street.

4. CENTRE STREET.
   A. Every vehicle traveling west on Centre Street shall stop at Roosevelt Street;
   B. Every vehicle traveling south from Middle School shall stop at Centre Street.

5. CHESTNUT STREET.
   A. Every vehicle traveling east on Chestnut Street shall stop at Adams Street;
   B. Every vehicle traveling west on Chestnut Street shall stop at Adams Street.

6. CLAYTON STREET.
   A. Every vehicle traveling west on Clayton Street shall stop at Washington Street.

7. HOUSTON.
   A. Every vehicle traveling north shall stop at Van Buren Street;
   B. Every vehicle traveling south on Houston shall stop at Mechanic Street.

8. INDUSTRIAL PARK ROAD.
   A. Every vehicle traveling south from G & G building shall stop before going onto Industrial Park Road.

9. LINCOLN STREET.
   A. Every vehicle traveling north on Lincoln Street shall stop at Clayton Street;
   B. Every vehicle traveling south on Lincoln Street shall stop at Industrial Road.

10. MCKINLEY.
    A. Every vehicle traveling north on McKinley Street shall stop at Centre Street.

11. MECHANIC.
    A. Every vehicle traveling west on Mechanic Street shall stop at Monroe Street.
12. MEIER COURT.
   A. Every vehicle traveling east on Meier Court shall stop at Adams Court.

13. MONROE STREET.
   A. Every vehicle traveling north on Monroe Street shall stop at Chestnut Street;
   B. Every vehicle traveling north on Monroe Street shall stop at Van Buren Street;
   C. Every vehicle traveling north on Monroe Street shall stop at Niagara Street;
   D. Every vehicle traveling north on Monroe Street shall stop at Watson Street;
   E. Every vehicle traveling south on Monroe Street shall stop at Watson Street;
   F. Every vehicle traveling south on Monroe Street shall stop at Niagara Street;
   G. Every vehicle traveling south on Monroe Street shall stop at Van Buren Street;
   H. Every vehicle traveling south on Monroe Street shall stop at Chestnut Street;
   I. Every vehicle traveling south on Monroe Street shall stop at Clayton Street.

14. NIAGARA STREET.
   A. Every vehicle traveling east on Niagara Street shall stop at Rutland Street;
   B. Every vehicle traveling east on Niagara Street shall stop at Roosevelt Street;
   C. Every vehicle traveling west on Niagara Street shall stop at Rutland Street;
   D. Every vehicle traveling west on Niagara Street shall stop at Roosevelt Street;
   E. Every vehicle traveling west on Niagara Street shall stop at Washington Street;    
      *(Ord. 03-2010 – Oct. 10 Supp.)*
   F. Every vehicle traveling east on Niagara Street shall stop at Washington Street.   
      *(Ord. 03-2010 – Oct. 10 Supp.)*

15. OAK STREET.
   A. Every vehicle traveling west on Oak Street shall stop at Monroe Street;
   B. Every vehicle traveling east on Oak Street shall stop at Monroe Street;
C. Every vehicle traveling east on Oak Street shall stop at Washington Street;
D. Every vehicle traveling west on Oak Street shall stop at Washington Street.

16. ROLLING HILLS COURT.
   A. Every vehicle traveling north on Rolling Hills shall stop at South Industrial Park Road eastern intersection;
   B. Every vehicle traveling north on Rolling Hills shall stop at South Industrial Park Road western intersection.

17. ROOSEVELT STREET.
   A. Every vehicle traveling south on Roosevelt Street shall stop at Van Buren Street.

18. RUTLAND STREET.
   A. Every vehicle traveling north on Rutland Street shall stop at Centre Street;
   B. Every vehicle traveling south on Rutland Street shall stop at Watson Street.

19. VAN BUREN STREET.
   A. Every vehicle traveling west on Van Buren Street shall stop at Rutland Street.

20. WATSON STREET.
   A. Every vehicle traveling east on Watson Street shall stop at Homestead Street;
   B. Every vehicle traveling west on Watson Street shall stop at Adams Street;
   C. Every vehicle traveling east on Watson Street shall stop at Adams Street.

21. WASHINGTON STREET.
   A. Every vehicle traveling north on Washington Street shall stop at Oak Street;
   B. Every vehicle traveling north on Washington Street shall stop at Chestnut Street;
   C. Every vehicle traveling north on Washington Street shall stop at Mechanic Street;
   D. Every vehicle traveling north on Washington Street shall stop at Van Buren Street;
   E. Every vehicle traveling north on Washington Street shall stop at Niagara Street;
   F. Every vehicle traveling north on Washington Street shall stop at Centre Street;
G. Every vehicle traveling north on Washington Street shall stop at Harrison Street;
H. Every vehicle traveling south on Washington Street shall stop at Centre Street;
I. Every vehicle traveling south on Washington Street shall stop at Niagara Street;
J. Every vehicle traveling south on Washington Street shall stop at Van Buren Street;
K. Every vehicle traveling south on Washington Street shall stop at Chestnut Street;
L. Every vehicle traveling south on Washington Street shall stop at Oak Street;
M. Every vehicle traveling south on Washington Street shall stop at South Industrial Park Road;
N. Every vehicle traveling south on Washington Street shall stop at Harrison Street;
O. Every vehicle traveling south on Washington Street shall stop at Mechanic Street.

(Ord. 06-2012 – Sep. 12 Supp.)

65.03 FOUR-WAY STOP INTERSECTIONS. Every driver of a vehicle shall stop before entering the following designated four-way stop intersections:

(Code of Iowa, Sec. 321.345)
1. Watson Street and Roosevelt Street;
2. Watson Street and Washington Street;
3. Monroe Street and Centre Street.

65.04 YIELD REQUIRED. Every driver of a vehicle shall yield in accordance with the following:

(Code of Iowa, Sec. 321.345)
1. WASHINGTON STREET. (Deleted by Ord. 06-2012 – Sep. 12 Supp.)
2. ADAMS STREET. Every vehicle traveling south on Adams Street shall yield at Oak Street;
3. RUTLAND STREET.
   A. Every vehicle traveling north on Rutland Street shall yield at Harrison Street;
   B. Every vehicle traveling south on Rutland Street shall yield at Harrison Street;
   C. Every vehicle traveling south on Rutland Street shall yield at Oak Street.

65.05 SCHOOL STOPS. At the following school crossing zones every driver of a vehicle approaching said zone shall bring the vehicle to a full stop at a point ten (10) feet from the approach side of the crosswalk marked by an authorized school stop sign and thereafter
proceed in a careful and prudent manner until the vehicle shall have passed through such school crossing zone.

(Code of Iowa, Sec. 321.249)

1. Intersection of Main Street and Centre Street.

2. Intersection of Centre Street and Washington Street. The sign will be placed from 7:30 a.m. to 8:15 a.m. and from 3:00 p.m. to 3:45 p.m. These times may be adjusted for late start and early out scenarios.

3. Washington Street between Centre Street and Watson Street will be closed to traffic from 7:45 a.m. to 8:15 a.m. when school is in session to allow for loading and unloading of students. These times may be adjusted for late start and early out scenarios.

65.06 STOP BEFORE CROSSING SIDEWALK. The driver of a vehicle emerging from a private roadway, alley, driveway, or building shall stop such vehicle immediately prior to driving onto the sidewalk area and thereafter shall proceed into the sidewalk area only when able to do so without danger to pedestrian traffic and shall yield the right-of-way to any vehicular traffic on the street into which the vehicle is entering.

(Code of Iowa, Sec. 321.353)

65.07 STOP WHEN TRAFFIC IS OBSTRUCTED. Notwithstanding any traffic control signal indication to proceed, no driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle.

65.08 YIELD TO PEDESTRIANS IN CROSSWALKS. Where traffic control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping, if need be, to yield to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection.

(Code of Iowa, Sec. 321.327)

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CHAPTER 66
LOAD AND WEIGHT RESTRICTIONS

66.01 TEMPORARY EMBARGO. If the Council declares an embargo when it appears by reason of deterioration, rain, snow or other climatic conditions that certain streets will be seriously damaged or destroyed by vehicles weighing in excess of an amount specified by the signs, no such vehicles shall be operated on streets so designated by such signs.

(Code of Iowa, Sec. 321.471 & 472)

66.02 PERMITS FOR EXCESS SIZE AND WEIGHT. The Police Chief may, upon application and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified by State law or the City over those streets named in the permit which are under the jurisdiction of the City and for which the City is responsible for maintenance.

(Code of Iowa, Sec. 321.473 & 321E.1)

66.03 LOAD LIMITS UPON CERTAIN STREETS. When signs are erected giving notice thereof, no person shall operate any vehicle with a gross weight in excess of the amounts specified on such signs at any time upon any of the following streets or parts of streets:

(Code of Iowa, Sec. 321.473 & 475)

- NONE -

66.04 LOAD LIMITS ON BRIDGES. Where it has been determined that any City bridge has a capacity less than the maximum permitted on the streets of the City, or on the street serving the bridge, the Police Chief may cause to be posted and maintained signs on said bridge and at suitable distances ahead of the entrances thereof to warn drivers of such maximum load limits, and no person shall drive a vehicle weighing, loaded or unloaded, upon said bridge in excess of such posted limit.

(Code of Iowa, Sec. 321.471)
CHAPTER 67

PEDESTRIANS

67.01  WALKING IN STREET. Pedestrians shall at all times when walking on or along a street, walk on the left side of the street.

(Code of Iowa, Sec. 321.326)

67.02  HITCHHIKING. No person shall stand in the traveled portion of a street for the purpose of soliciting a ride from the driver of any private vehicle.

(Code of Iowa, Sec. 321.331)

67.03  PEDESTRIAN CROSSING. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(Code of Iowa, Sec. 321.328)

67.04  USE SIDEWALKS. Where sidewalks are provided it is unlawful for any pedestrian to walk along and upon an adjacent street.
CHAPTER 68

ONE-WAY TRAFFIC

68.01 ONE-WAY TRAFFIC REQUIRED. Upon the following streets and alleys vehicular traffic, other than permitted cross traffic, shall move only in the indicated direction when appropriate signs are in place.

(Code of Iowa, Sec. 321.236 [4])

- NONE -
CHAPTER 69

PARKING REGULATIONS

69.01  PARKING LIMITED OR CONTROLLED. Parking of vehicles shall be controlled or limited where so indicated by designated traffic control devices. No person shall stop, park, or stand a vehicle in violation of any such posted parking regulations unless in compliance with the directions of a peace officer.

69.02  PARK ADJACENT TO CURB. No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the right-hand wheels of the vehicle within eighteen (18) inches of the curb or edge of the roadway except as hereinafter provided in the case of angle parking and vehicles parked on the left-hand side of one-way streets.

(Code of Iowa, Sec. 321.361)

69.03  PARK ADJACENT TO CURB – ONE-WAY STREET. No person shall stand or park a vehicle on the left-hand side of a one-way street other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the left-hand wheels of the vehicle within eighteen (18) inches of the curb or edge of the roadway except as hereinafter provided in the case of angle parking.

(Code of Iowa, Sec. 321.361)

69.04  ANGLE PARKING. Angle or diagonal parking is permitted only in the following locations:

(Code of Iowa, Sec. 321.361)

1. South side of Centre Street – Main Street to Monroe Street;
2. North side of Niagara Street – Main Street to Washington Street;
3. North side of West Van Buren Street – Main Street to 1st Alley;
4. South side of Niagara Street – Adams Street to Rutland Street;
5. East side of Rutland Street – Niagara Street to Van Buren Street;
6. West side of Adams Street – Niagara Street to Van Buren Street;
7. West side of Washington Street – Chestnut Street to Oak Street;
8. North side of Oak Street – Washington Street to Adams Street;
9. West side of Washington Street – Oak Street to Clayton Street;
10. West side of Adams Street – Watson Street to Harrison Street.

(Ord. 07-2012 – Sep. Supp.)
69.05 ANGLE PARKING - MANNER. Upon those streets or portions of streets which have been signed or marked for angle parking, no person shall park or stand a vehicle other than at an angle to the curb or edge of the roadway or in the center of the roadway as indicated by such signs and markings. No part of any vehicle, or the load thereon, when parked within a diagonal parking district, shall extend into the roadway more than a distance of sixteen (16) feet when measured at right angles to the adjacent curb or edge of roadway.

(Code of Iowa, Sec. 321.361)

69.06 PARKING FOR CERTAIN PURPOSES ILLEGAL. No person shall park a vehicle upon public property for more than 72 hours, unless otherwise limited under the provisions of this chapter, or for any of the following principal purposes:

(Code of Iowa, Sec. 321.236[1])

1. Sale. Displaying such vehicle for sale;
2. Repairing. For lubricating, repairing or for commercial washing of such vehicle except such repairs as are necessitated by an emergency;
3. Advertising. Displaying advertising;
4. Merchandise Sales. Selling merchandise from such vehicle except in a duly established market place or when so authorized or licensed under this Code of Ordinances.

69.07 PARKING PROHIBITED. No one shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control device, in any of the following places:

1. Crosswalk. On a crosswalk.
   (Code of Iowa, Sec. 321.358[5])
2. Center Parkway. On the center parkway or dividing area of any divided street.
   (Code of Iowa, Sec. 321.236[1])
3. Mailboxes. Within twenty (20) feet on either side of a mailbox which is so placed and so equipped as to permit the depositing of mail from vehicles on the roadway.
   (Code of Iowa, Sec. 321.236[1])
4. Sidewalks. On or across a sidewalk.
   (Code of Iowa, Sec. 321.358[1])
5. Driveway. In front of a public or private driveway.
   (Code of Iowa, Sec. 321.358[2])
6. Intersection. Within an intersection or within ten (10) feet of an intersection of any street or alley.
   (Code of Iowa, Sec. 321.358[3])
7. Fire Hydrant. Within five (5) feet of a fire hydrant.
   (Code of Iowa, Sec. 321.358[4])
8. Stop Sign or Signal. Within ten (10) feet upon the approach to any flashing beacon, stop or yield sign, or traffic control signal located at the side of a roadway.
   (Code of Iowa, Sec. 321.358[6])
9. Fire Station. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance when properly sign posted.

(Code of Iowa, Sec. 321.358[9])

10. Excavations. Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic.

(Code of Iowa, Sec. 321.358[10])

11. Double Parking. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.

(Code of Iowa, Sec. 321.358[11])

12. Hazardous Locations. When, because of restricted visibility or when standing or parked vehicles would constitute a hazard to moving traffic, or when other traffic conditions require, the Council may cause curbs to be painted with a yellow color and erect no parking or standing signs.

(Code of Iowa, Sec. 321.358[13])

13. Churches, Nursing Homes and Other Buildings. A space of fifty (50) feet is hereby reserved at the side of the street in front of any theatre, auditorium, hotel having more than twenty-five (25) sleeping rooms, hospital, nursing home, taxicab stand, bus depot, church, or other building where large assemblages of people are being held, within which space, when clearly marked as such, no motor vehicle shall be left standing, parked or stopped except in taking on or discharging passengers or freight, and then only for such length of time as is necessary for such purpose.

(Code of Iowa, Sec. 321.360)

14. Alleys. No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the roadway for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within an alley in such a position as to block the driveway entrance to any abutting property. The provisions of this subsection shall not apply to a vehicle parked in any alley which is eighteen (18) feet wide or less; provided said vehicle is parked to deliver goods or services.

(Code of Iowa, Sec. 321.236[1])

15. Ramps. In front of a curb cut or ramp which is located on public or private property in a manner which blocks access to the curb cut or ramp.

(Code of Iowa, Sec. 321.358[15])

16. Area Between Lot Line and Curb Line. That area of the public way not covered by sidewalk and lying between the lot line and the curb line, where curbing has been installed.

17. In More Than One Space. In any designated parking space so that any part of the vehicle occupies more than one such space or protrudes beyond the markings designating such space.

69.08 PERSONS WITH DISABILITIES PARKING. The following regulations shall apply to the establishment and use of persons with disabilities parking spaces:

1. Establishment. Persons with disabilities parking spaces shall be established and designated in accordance with Chapter 321L of the Code of Iowa and Iowa Administrative Code, 661-18. No unauthorized person shall establish any on-street persons with disabilities parking space without first obtaining Council approval.
2. Improper Use. The following uses of a persons with disabilities parking space, located on either public or private property, constitute improper use of a persons with disabilities parking permit, which is a violation of this Code of Ordinances:

   (Code of Iowa, Sec. 321L.4[2])

   A. Use by an operator of a vehicle not displaying a persons with disabilities parking permit;

   B. Use by an operator of a vehicle displaying a persons with disabilities parking permit but not being used by a person issued a permit or being transported in accordance with Section 321L.2[1b] of the Code of Iowa;

   C. Use by a vehicle in violation of the rules adopted under Section 321L.8 of the Code of Iowa.

3. Wheelchair Parking Cones. No person shall use or interfere with a wheelchair parking cone in violation of the following:

   A. A person issued a persons with disabilities parking permit must comply with the requirements of Section 321L.2A(1) of the Code of Iowa when utilizing a wheelchair parking cone.

   B. A person shall not interfere with a wheelchair parking cone which is properly placed under the provisions of Section 321L.2A(1) of the Code of Iowa.

69.09 NO PARKING ZONES. No one shall stop, stand or park a vehicle in any of the following specifically designated no parking zones except when necessary to avoid conflict with other traffic or in compliance with the direction of a peace officer or traffic control signal.

   (Code of Iowa, Sec. 321.236 [1])

   1. East side of Main Street from Van Buren Street to Clayton Street;

   2. West side of Main Street from Van Buren Street to Clayton Street;

   3. West side of Main Street from Niagara Street south 54 feet from the yellow curb marking;

   4. North Main Street from Watson Street north to 409 North Main Street;

   5. Lincoln Street, the entire length of the street;

   6. Van Buren Street from Monroe Street to Roosevelt Street;

   7. Rolling Hills Court on the right side of the street entering east entrance and on the left side of the street entering west entrance;

   8. East side of Main Street from the centerline of East Van Buren Street south 115 feet;

   9. West side of Main Street/Hwy 52 from centerline of West Van Buren Street north 70 feet;

   10. East side of Main Street/Hwy 52 from centerline of East Van Buren Street north 70 feet.

   (#8-10 – Ord. 05-2012 – Sep. 12 Supp.)

   11. Centre Street from Adams Street to west City limits.

   (Ord. 02-2013 – Nov. 14 Supp.)
69.10 **ALL NIGHT PARKING PROHIBITED.** No person, except physicians or other persons on emergency calls, shall park a vehicle on any of the following named streets between the hours of 2:00 a.m. and 7:00 a.m., October 1 to April 1.

(Code of Iowa, Sec. 321.236 [1])

1. Main Street, from Mechanic Street to Watson Street.

69.11 **TRUCK PARKING LIMITED.** No person shall park a motor truck, semi-trailer, or other motor vehicle with trailer attached in violation of the following regulations. The provisions of this section shall not apply to pickup, light delivery or panel delivery trucks.

(Code of Iowa, Sec. 321.236 [1])

1. Highway 52. Excepting only when such vehicles are actually engaged in the delivery or receiving of merchandise or cargo within the prohibited area, no person shall park or leave unattended such vehicle on Highway 52 and except for the 30-minute parking area on the south side of the park. When actually receiving or delivering merchandise or cargo such vehicle shall be stopped or parked in a manner which will not interfere with other traffic.

2. Semi-tractor Trailers. No person shall park or leave unattended a semi-tractor or semi-trailer in any area of the City lying outside of Highway 52 for a period not to exceed sixty (60) minutes, which period may be extended by the express permission of the Police Chief.

69.12 **SNOW REMOVAL.** No person shall park, abandon or leave unattended any vehicle on any public street, alley, or City-owned off-street parking area during snow removal operations unless the snow has been removed or plowed from said street, alley or parking area and the snow has ceased to fall.

(Code of Iowa, 321.236[1])

69.13 **SCHOOL PARKING.** No person shall park any vehicle on the following streets, or parts of streets, between the hours of 12:00 noon to 4:00 p.m. when school is in session:

1. Centre Street, on the north side, from Adams Street to Washington Street.

69.14 **DAYCARE CENTER PARKING.** No person shall park any vehicle on Watson Street in between the posted signs adjacent to the daycare center for more than 10 minutes on Monday through Friday each week between 6:00 a.m. and 6:00 p.m.
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CHAPTER 70

TRAFFIC CODE ENFORCEMENT PROCEDURES

70.01 ARREST OR CITATION. Whenever a peace officer has reasonable cause to believe that a person has violated any provision of the Traffic Code, such officer may:

1. Immediate Arrest. Immediately arrest such person and take such person before a local magistrate, or
2. Issue Citation. Without arresting the person, prepare in quintuplicate a combined traffic citation and complaint as adopted by the Iowa Commissioner of Public Safety, or issue a uniform citation and complaint utilizing a State-approved computerized device.

(Code of Iowa, Sec. 805.6 & 321.485)

70.02 SCHEDULED VIOLATIONS. For violations of the Traffic Code which are designated by Section 805.8A of the Code of Iowa to be scheduled violations, the scheduled fine for each of those violations shall be as specified in Section 805.8A of the Code of Iowa.

(Code of Iowa, Sec. 805.8 & 805.8A)

70.03 PARKING VIOLATIONS: ALTERNATE. Uncontested violations of parking restrictions imposed by this Code of Ordinances shall be charged upon a simple notice of a fine payable at the office of the City Clerk. The owner or operator of any vehicle who received a simple notice of a fine, either personally or by the attaching of such notice to the vehicle, that the vehicle is in violation of the ordinances of the City shall pay to the City a fine for such violation as follows:

1. For all violations of designated person with disabilities parking spaces, the sum of one hundred dollars ($100.00).
2. For all violations of snow removal ordinances as stated in Sections 69.10 and 69.12 of this Code of Ordinances, the sum of thirty-five dollars ($35.00).
3. For all other violations, the sum of fifteen dollars ($15.00).

(Code of Iowa, Sec. 321.236 [1a] & 321L.4[2])

70.04 PARKING VIOLATIONS: VEHICLE UNATTENDED. When a vehicle is parked in violation of any provision of the Traffic Code, and the driver is not present, the notice of fine or citation as herein provided shall be attached to the vehicle in a conspicuous place.

70.05 PRESUMPTION IN REFERENCE TO ILLEGAL PARKING. In any proceeding charging a standing or parking violation, a prima facie presumption that the registered owner was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred, shall be raised by proof that:

1. Described Vehicle. The particular vehicle described in the information was parked in violation of the Traffic Code, and
2. Registered Owner. The defendant named in the information was the registered owner at the time in question.

70.06 IMPOUNDING VEHICLES. A peace officer is hereby authorized to remove, or cause to be removed, a vehicle from a street, public alley, public parking lot or highway to the nearest garage or other place of safety, or to a garage designated or maintained by the City, under the circumstances hereinafter enumerated:

1. Disabled Vehicle. When a vehicle is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.
   
   (Code of Iowa, Sec. 321.236 [1])

2. Illegally Parked Vehicle. When any vehicle is left unattended and is so illegally parked as to constitute a definite hazard or obstruction to the normal movement of traffic.

   (Code of Iowa, Sec. 321.236 [1])

3. Snow Removal. When any vehicle is left parked in violation of a ban on parking during snow removal operations.

4. Parked Over Limited Time Period. When any vehicle is left parked for a continuous period in violation of any limited parking time. If the owner can be located, the owner shall be given an opportunity to remove the vehicle.

   (Code of Iowa, Sec. 321.236[1])

5. Costs. In addition to the standard penalties provided, the owner or driver of any vehicle impounded for the violation of any of the provisions of this chapter shall be required to pay the reasonable cost of towing and storage.

   (Code of Iowa, Sec. 321.236 [1])

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CHAPTER 74
GOLF CARTS

74.01 PURPOSE. The purpose of this chapter is to permit the operation of golf carts on certain streets in the City, as authorized by Section 321.247 of the Code of Iowa, as amended. This chapter applies whenever a golf cart is operated on any street or alley, subject to those exceptions stated herein.

74.02 DEFINITION. “Golf cart” means a three or four wheeled recreational vehicle generally used for transportation of person(s) in the sport of golf, that is limited in engine displacement of less than 800 cubic centimeters and total dry weight of less than 800 pounds. This shall not include any class or type of ATV.

74.03 OPERATION OF GOLF CARTS PERMITTED. Golf carts may be operated upon the streets of the City by persons possessing a valid Iowa operator’s license, and at least eighteen (18) years of age, except as prohibited in Section 74.04 of this chapter.

74.04 PROHIBITED STREETS. Golf carts shall not be operated upon any City street which is a primary road extension through the City. However, golf carts may cross such a primary road extension. All of Highway 52 (aka Main Street) and Van Buren Street from Main Street east to the City limits are hereby designated as primary road extensions in the City.

74.05 EQUIPMENT. Golf carts operated upon any street shall be equipped with at least the following:

1. A slow-moving vehicle sign.
2. A bicycle safety flag, the top of which shall be a minimum of five (5) feet from ground level.
3. Adequate brakes.

74.06 HOURS. Golf carts may be operated on City streets only between sunrise and sunset.

74.07 SPEED. No golf carts shall be operated on any City street at a speed in excess of twenty-five (25) miles per hour.

74.08 PERMITS. No person shall operate a golf cart on any public street or alley for any purpose unless the owner of the golf cart has been issued a City of Garnavillo permit to operate the golf cart on City streets, issued by the City Administrator.

1. Golf cart owners may apply for a permit on forms provided by the City.
2. The City Administrator shall not issue a permit until the owner/operator has provided the following:
   A. Evidence that the operator is at least 18 years of age, and possesses a valid driver’s license. A copy of applicant’s driver’s license will be obtained for the file.
   B. Proof owner/operator has liability insurance covering operation of golf carts on City streets.
   C. The owner/operator must bring the golf cart to City Hall to be inspected.

3. All permits shall be issued for a specific golf cart. Permits holders will be issued a number and will be required to purchase 3” minimum reflective numbers to affix to the left side rear fender and left side front fender.

4. The fee for such permits shall be twenty-five dollars ($25.00). Permits will be granted for one (1) year valid from January 1 through December 31. Permits may be purchased at anytime during the year but will be valid only through December 31.

5. The permit may be suspended or revoked upon receipt of sufficient evidence that the permit holder has violated the conditions of the permit or has abused the privilege of being a permit holder. There will be no refund of the permit fee in the event of revocation or suspension.

74.09 VIOLATION AND PENALTY.

1. Any person guilty of violating the provisions herein shall be guilty of a simple misdemeanor and shall be subject to a fine of one-hundred dollars ($100.00) and revocation of the City of Garnavillo permit for a period of two months.

2. Any person guilty of violating this chapter two times in a twelve (12) month period herein shall be guilty of a simple misdemeanor and shall be subject to a fine of two-hundred dollars ($200.00) and revocation of the City of Garnavillo permit for a period of two years.

3. Any person guilty of violating this chapter three times in a twelve (12) month period shall be guilty of a simple misdemeanor and shall be subject to a fine of three-hundred dollars ($300.00) and permanent revocation of the City of Garnavillo permit.

74.10 REVOCATION OF OPERATING PRIVILEGES. Any person that has his/her golf cart operation permit revoked shall turn their permit into City Hall within five (5) days after receiving the notice of revocation. Upon revocation, the permit holder shall remove and destroy the permit identification number stickers on his/her golf cart and provide proof of such destruction to the City Administrator.

(Chapter 74 – Ord. 02-2011 – Sep. 12 Supp.)
CHAPTER 75

ALL-TERRAIN VEHICLES AND SNOWMOBILES

75.01 Purpose. The purpose of this chapter is to regulate the operation of all-terrain vehicles and snowmobiles within the City.

75.02 Definitions. For use in this chapter the following terms are defined:

1. “All-terrain vehicle” or “ATV” means a motorized vehicle, with not less than three and not more than six non-highway tires, that is limited in engine displacement to less than one thousand (1,000) cubic centimeters and in total dry weight to less than one thousand two hundred (1,200) pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

(Code of Iowa, Sec. 321I.1)

2. “Off-road motorcycle” means a two-wheeled motor vehicle that has a seat or saddle designed to be straddled by the operator and handlebars for steering control and that is intended by the manufacturer for use on natural terrain. “Off-road motorcycle” includes a motorcycle that was originally issued a certificate of title and registered for highway use under Chapter 321 of the Code of Iowa, but which contains design features that enable operation over natural terrain. An operator of an off-road motorcycle is also subject to the provisions of this chapter governing the operation of all-terrain vehicles.

(Code of Iowa, Sec. 321I.1)

3. “Off-road utility vehicle” means a motorized vehicle, with not less than four and not more than eight non-highway tires or rubberized tracks, that has a seat that is of bucket or bench design, not intended to be straddled by the operator, and a steering wheel or control levers for control. “Off-road utility vehicle” includes the following vehicles:

(Code of Iowa, Sec. 321I.1)

A. “Off-road utility vehicle – type 1” includes vehicles with a total dry weight of 1,200 pounds or less and a width of 50 inches or less.

B. “Off-road utility vehicle – type 2” includes vehicles, other than type 1 vehicles, with a total dry weight of 2,000 pounds or less and a width of 65 inches or less.

C. “Off-road utility vehicle – type 3” includes vehicles with a total dry weight of more than 2,000 pounds or a width of more than 65 inches, or both.

An operator of an off-road utility vehicle is also subject to the provisions of this chapter governing the operation of all-terrain vehicles.

(Ord. 09-2014 – Nov. 14 Supp.)
4. “Snowmobile” means a motorized vehicle weighing less than one thousand (1,000) pounds which uses sled-type runners or skis, endless belt-type tread with a width of forty-eight (48) inches or less, or any combination of runners, skis, or tread, and is designed for travel on snow or ice. “Snowmobile” does not include an all-terrain vehicle which has been altered or equipped with runners, skis, belt-type tracks, or treads.

(Code of Iowa, Sec. 321G.1)

75.03 GENERAL REGULATIONS. No person shall operate an ATV, off-road motorcycle or off-road utility vehicle within the City in violation of Chapter 321I of the Code of Iowa or a snowmobile within the City in violation of the provisions of Chapter 321G of the Code of Iowa or in violation of rules established by the Natural Resource Commission of the Department of Natural Resources governing their registration, equipment and manner of operation.

(Code of Iowa, Ch. 321G & Ch. 321I)

75.04 OPERATION OF SNOWMOBILES. The operators of snowmobiles shall comply with the following restrictions as to where snowmobiles may be operated within the City:

1. Streets. Snowmobiles may be operated upon the following designated streets:
   A. Washington Street;
   B. Monroe Street;
   C. Harrison Street between Washington Street and Monroe Street, except on Main Street;
   D. Centre Street between Main Street and Monroe Street, and Centre Street between the west City limits and Washington Street;
   E. Niagara Street between Washington Street and Main Street;
   F. Clayton Street between Washington Street and Monroe Street, except on Main Street.

2. Exceptions. Snowmobiles may be operated on prohibited streets only under the following circumstances:
   A. Emergencies. Snowmobiles may be operated on any street in an emergency during the period of time when and at locations where snow upon the roadway renders travel by conventional motor vehicles impractical.

   (Code of Iowa, Sec. 321G.9[4c])

   B. Residents. Residents of the City may take the most direct route from their places of residence to the designated route.

   C. Direct Crossing. Snowmobiles may make a direct crossing of a prohibited street provided all of the following occur:

      (1) The crossing is made at an angle of approximately ninety degrees (90°) to the direction of the street and at a place where no obstruction prevents a quick and safe crossing;

      (2) The snowmobile is brought to a complete stop before crossing the street;
(3) The driver yields the right-of-way to all on-coming traffic which constitutes an immediate hazard; and

(4) In crossing a divided street, the crossing is made only at an intersection of such street with another street.

(Code of Iowa, Sec. 321G.9[2])

3. Trails. Snowmobiles shall not be operated on all-terrain vehicle trails except where so designated.

(Code of Iowa, Sec. 321G.9[4 g])

4. Sidewalk or Parking. Snowmobiles shall not be operated upon the public sidewalk or that portion of the street located between the curb line and the sidewalk or property line commonly referred to as the “parking” except for purposes of crossing the same to a public street upon which operation is authorized by this chapter.

75.05 OPERATION OF ALL-TERRAIN VEHICLES. The operators of ATVs shall comply with the following restrictions as to where ATVs may be operated within the City:

1. Streets. ATVs and off-road utility vehicles may be operated on streets only in accordance with Section 321.234A of the Code of Iowa or on such streets as may be designated by resolution of the Council for the operation of registered ATVs or registered off-road utility vehicles. In designating such streets, the Council may authorize ATVs and off-road utility vehicles to stop at service stations or convenience stores along a designated street.

(Ord. 07-2010 – Oct. 10 Supp.)

(Code of Iowa, Sec. 321I.10[1 & 3])

2. Trails. ATVs shall not be operated on snowmobile trails except where designated.

(Code of Iowa, Sec. 321I.10[3])

3. Railroad Right-of-Way. ATVs shall not be operated on an operating railroad right-of-way. An ATV may be driven directly across a railroad right-of-way only at an established crossing and notwithstanding any other provisions of law may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic.

(Code of Iowa, Sec. 321I.14[h])

4. Parks and Other City Land. ATVs shall not be operated in any park, playground or upon any other City-owned property without the express permission of the City.

5. Sidewalk or Parking. ATVs shall not be operated upon the public sidewalk or that portion of the street located between the curb line and the sidewalk or property line commonly referred to as the “parking.”

6. Snow Removal. ATVs shall be allowed on streets when used for snow removal purposes.

75.06 NEGLIGENCE. The owner and operator of an ATV or snowmobile are liable for any injury or damage occasioned by the negligent operation of the ATV or snowmobile. The owner of an ATV or snowmobile shall be liable for any such injury or damage only if the owner was the operator of the ATV or snowmobile at the time the injury or damage occurred or if the operator had the owner’s consent to operate the ATV or snowmobile at the time the injury or damage occurred.

(Code of Iowa, Sec. 321G.18 & 321I.19)
75.07 ACCIDENT REPORTS. Whenever an ATV or snowmobile is involved in an accident resulting in injury or death to anyone or property damage amounting to one thousand dollars ($1,000.00) or more, either the operator or someone acting for the operator shall immediately notify a law enforcement officer and shall file an accident report, in accordance with State law.

(Code of Iowa, Sec. 321G.10 & 321I.11)
CHAPTER 76

BICYCLE REGULATIONS

76.01 SCOPE OF REGULATIONS. These regulations shall apply whenever a bicycle is operated upon any street or upon any public path set aside for the exclusive use of bicycles, subject to those exceptions stated herein.

(Code of Iowa, Sec. 321.236 [10])

76.02 TRAFFIC CODE APPLIES. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of the State declaring rules of the road applicable to vehicles or by the traffic code of the City applicable to the driver of a vehicle, except as to those provisions which by their nature can have no application. Whenever such person dismounts from a bicycle the person shall be subject to all regulations applicable to pedestrians.

(Code of Iowa, Sec. 321.234)

76.03 DOUBLE RIDING RESTRICTED. A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(Code of Iowa, Sec. 321.234 [3 and 4])

76.04 TWO ABREAST LIMIT. Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. All bicycles ridden on the roadway shall be kept to the right and shall be operated as near as practicable to the right-hand edge of the roadway.

(Code of Iowa, Sec. 321.236 [10])

76.05 BICYCLE PATHS. Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

(Code of Iowa, Sec. 321.236 [10])

76.06 SPEED. No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.

(Code of Iowa, Sec. 321.236 [10])

76.07 EMERGING FROM ALLEY OR DRIVEWAY. The operator of a bicycle emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on said sidewalk or sidewalk area, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

(Code of Iowa, Sec. 321.236 [10])
CHAPTER 76  
BICYCLE REGULATIONS

76.08  **CARRYING ARTICLES.** No person operating a bicycle shall carry any package, bundle or article which prevents the rider from keeping at least one hand upon the handle bars.

(\textit{Code of Iowa, Sec. 321.236 [10]})

76.09  **RIDING ON SIDEWALKS.** The following shall apply to riding bicycles on sidewalks:

1. **Business District.** No person shall ride a bicycle upon a sidewalk within the Business District, as defined in Section 60.02(1) of this Code of Ordinances.

(\textit{Code of Iowa, Sec. 321.236 [10]})

2. **Other Locations.** When signs are erected on any sidewalk or roadway prohibiting the riding of bicycles thereon by any person, no person shall disobey the signs.

(\textit{Code of Iowa, Sec. 321.236 [10]})

3. **Yield Right-of-way.** Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing.

(\textit{Code of Iowa, Sec. 321.236 [10]})

76.10  **TOWING.** It is unlawful for any person riding a bicycle to be towed or to tow any other vehicle upon the streets of the City.

76.11  **IMPROPER RIDING.** No person shall ride a bicycle in an irregular or reckless manner such as zigzagging, stunting, speeding or otherwise so as to disregard the safety of the operator or others.

76.12  **PARKING.** No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such a manner as to afford the least obstruction to pedestrian traffic.

(\textit{Code of Iowa, Sec. 321.236 [10]})

76.13  **EQUIPMENT REQUIREMENTS.** Every person riding a bicycle shall be responsible for providing and using equipment as provided herein:

1. **Lamps Required.** Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least three hundred (300) feet to the front and with a lamp on the rear exhibiting a red light visible from a distance of three hundred (300) feet to the rear except that a red reflector on the rear, of a type which shall be visible from all distances from fifty (50) feet to three hundred (300) feet to the rear when directly in front of lawful upper beams of headlamps on a motor vehicle, may be used in lieu of a rear light.

(\textit{Code of Iowa, Sec. 321.397})

2. **Brakes Required.** Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheel skid on dry, level, clean pavement.

(\textit{Code of Iowa, Sec. 321.236 [10]})

76.14  **SPECIAL PENALTY.** Any person violating the provisions of this chapter may, in lieu of the scheduled fine for bicyclists or standard penalty provided for violations of the Code
of Ordinances, allow the person’s bicycle to be impounded by the City for not less than five (5) days for the first offense, ten (10) days for a second offense and thirty (30) days for a third offense.
CHAPTER 80

ABANDONED VEHICLES

80.01 DEFINITIONS. For use in this chapter the following terms are defined:

(Code of Iowa, Sec. 321.89[1])

1. “Abandoned vehicle” means any of the following:
   A. A vehicle that has been left unattended on public property for more than twenty-four (24) hours and lacks current registration plates or two or more wheels or other parts which renders the vehicle totally inoperable.
   B. A vehicle that has remained illegally on public property for more than 24 hours.
   C. A vehicle that has been unlawfully parked or placed on private property without the consent of the owner or person in control of the property for more than 24 hours.
   D. A vehicle that has been legally impounded by order of a police authority and has not been reclaimed for a period of ten (10) days. However, a police authority may declare the vehicle abandoned within the ten-day period by commencing the notification process.
   E. Any vehicle parked on the highway determined by a police authority to create a hazard to other vehicle traffic.
   F. A vehicle that has been impounded pursuant to Section 321J.4B of the Code of Iowa by order of the court and whose owner has not paid the impoundment fees after notification by the person or agency responsible for carrying out the impoundment order.

2. “Demolisher” means a person licensed under Chapter 321H of the Code of Iowa whose business it is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck, or dismantle vehicles.

3. “Garage keeper” means any operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of motor vehicles.

4. “Police authority” means the Iowa state patrol or any law enforcement agency of a county or city.

80.02 AUTHORITY TO TAKE POSSESSION OF ABANDONED VEHICLES. A police authority, upon the authority’s own initiative or upon the request of any other authority having the duties of control of highways or traffic, shall take into custody an abandoned vehicle on public property and may take into custody any abandoned vehicle on private property. The police authority may employ its own personnel, equipment, and facilities or
hire a private entity, equipment, and facilities for the purpose of removing, preserving, storing, or disposing of abandoned vehicles. A property owner or other person in control of private property may employ a private entity which is a garage keeper to dispose of an abandoned vehicle, and the private entity may take into custody the abandoned vehicle without a police authority’s initiative. If a police authority employs a private entity to dispose of abandoned vehicles, the police authority shall provide the private entity with the names and addresses of the registered owners, all lienholders of record, and any other known claimant to the vehicle or the personal property found in the vehicle.

(Code of Iowa, Sec. 321.89[2])

80.03 NOTICE BY MAIL. The police authority or private entity that takes into custody an abandoned vehicle shall notify, within twenty (20) days, by certified mail, the last known registered owner of the vehicle, all lienholders of record, and any other known claimant to the vehicle or to personal property found in the vehicle, addressed to the parties’ last known addresses of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall describe the year, make, model and vehicle identification number of the vehicle, describe the personal property found in the vehicle, set forth the location of the facility where the vehicle is being held, and inform the persons receiving the notice of their right to reclaim the vehicle and personal property within ten (10) days after the effective date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody and upon payment of the costs of the notice. The notice shall also state that the failure of the owner, lienholders or claimants to exercise their right to reclaim the vehicle or personal property within the time provided shall be deemed a waiver by the owner, lienholders and claimants of all right, title, claim and interest in the vehicle or personal property and that failure to reclaim the vehicle or personal property is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher and to disposal of the personal property by sale or destruction. If the abandoned vehicle was taken into custody by a private entity without a police authority’s initiative, the notice shall state that the private entity may claim a garage keeper’s lien as described in Section 321.90 of the Code of Iowa, and may proceed to sell or dispose of the vehicle. If the abandoned vehicle was taken into custody by a police authority or by a private entity hired by a police authority, the notice shall state that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or property by the police authority or private entity or of the assessment of fees and charges provided by this section may ask for an evidentiary hearing before the police authority to contest those matters. If the persons receiving notice do not ask for a hearing or exercise their right to reclaim the vehicle or personal property within the ten-day reclaiming period, the owner, lienholders or claimants shall no longer have any right, title, claim, or interest in or to the vehicle or the personal property. A court in any case in law or equity shall not recognize any right, title, claim, or interest of the owner, lienholders or claimants after the expiration of the ten-day reclaiming period.

(Code of Iowa, Sec. 321.89[3a])

80.04 NOTIFICATION IN NEWSPAPER. If it is impossible to determine with reasonable certainty the identity and addresses of the last registered owner and all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet all requirements of notice under Section 80.03. The published notice may contain multiple listings of abandoned vehicles and personal property but shall be published within the same time requirements and contain the same information as prescribed for mailed notice in Section 80.03.

(Code of Iowa, Sec. 321.89[3b])
80.05 FEES FOR IMPOUNDMENT. The owner, lienholder, or claimant shall pay three dollars ($3.00) if claimed within five (5) days of impounding, plus one dollar ($1.00) for each additional day within the reclaiming period plus towing charges, if stored by the City, or towing and storage fees, if stored in a public garage, whereupon said vehicle shall be released. The amount of towing charges, and the rate of storage charges by privately owned garages, shall be established by such facility.

(Code of Iowa, Sec. 321.89[3a])

80.06 DISPOSAL OF ABANDONED VEHICLES. If an abandoned vehicle has not been reclaimed as provided herein, the police authority or private entity shall make a determination as to whether or not the motor vehicle should be sold for use upon the highways, and shall dispose of the motor vehicle in accordance with State law.

(Code of Iowa, Sec. 321.89[4])

80.07 DISPOSAL OF TOTALLY INOPERABLE VEHICLES. The City or any person upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost or destroyed, may dispose of such motor vehicle to a demolisher for junk, without a title and without notification procedures, if such motor vehicle lacks an engine or two or more wheels or other structural part which renders the vehicle totally inoperable. The police authority shall give the applicant a certificate of authority. The applicant shall then apply to the County Treasurer for a junking certificate and shall surrender the certificate of authority in lieu of the certificate of title.

(Code of Iowa, Sec. 321.90[2e])

80.08 PROCEEDS FROM SALES. Proceeds from the sale of any abandoned vehicle shall be applied to the expense of auction, cost of towing, preserving, storing, and notification required, in accordance with State law. Any balance shall be held for the owner of the motor vehicle or entitled lienholder for ninety (90) days, and then shall be deposited in the State Road Use Tax Fund. Where the sale of any vehicle fails to realize the amount necessary to meet costs the police authority shall apply for reimbursement from the Department of Transportation.

(Code of Iowa, Sec. 321.89[4])

80.09 DUTIES OF DEMOLISHER. Any demolisher who purchases or otherwise acquires an abandoned motor vehicle for junk shall junk, scrap, wreck, dismantle, or otherwise demolish such motor vehicle. A demolisher shall not junk, scrap, wreck, dismantle, or demolish a vehicle until the demolisher has obtained the junking certificate issued for the vehicle.

(Code of Iowa, Sec. 321.90[3a])
CHAPTER 90
WATER SERVICE SYSTEM

90.01 Definitions. The following terms are defined for use in the chapters in this Code of Ordinances pertaining to the Water Service System:

1. “Combined service account” means a customer service account for the provision of two or more utility services.
2. “Customer” means, in addition to any person receiving water service from the City, the owner of the property served, and as between such parties the duties, responsibilities, liabilities and obligations hereinafter imposed shall be joint and several.
3. “Superintendent” means the Superintendent of the City water system or any duly authorized assistant, agent or representative.
4. “Water main” means a water supply pipe provided for public or community use.
5. “Water service pipe” means the pipe from the water main to the building served.
6. “Water system” or “water works” means all public facilities for securing, collecting, storing, pumping, treating and distributing water.

90.02 Superintendent’s Duties. The Superintendent shall supervise the installation of water service pipes and their connection to the water main and enforce all regulations pertaining to water services in the City in accordance with this chapter. This chapter shall apply to all replacements of existing water service pipes as well as to new ones. The Superintendent shall make such rules, not in conflict with the provisions of this chapter, as may be needed for the detailed operation of the water system, subject to the approval of the Council. In the event of an emergency the Superintendent may make temporary rules for the protection of the system until due consideration by the Council may be had.

(Code of Iowa, Sec. 372.13[4])

90.03 Mandatory Connections. All residences and business establishments within the City limits intended or used for human habitation, occupancy or use shall be connected to the public water system, if it is reasonably available and if the building is not furnished with pure and wholesome water from some other source.
90.04 **ABANDONED CONNECTIONS.** When an existing water service is abandoned or a service is renewed with a new tap in the main, all abandoned connections with the mains shall be turned off at the corporation stop and made absolutely watertight.

90.05 **PERMIT.** Before any person makes a connection with the public water system, a written permit must be obtained from the City. The application for the permit shall include a legal description of the property, the name of the property owner, the name and address of the person who will do the work, and the general uses of the water. If the proposed work meets all the requirements of this chapter and if all fees required under this chapter have been paid, the permit shall be issued. Work under any permit must be completed within sixty (60) days after the permit is issued, except that when such time period is inequitable or unfair due to conditions beyond the control of the person making the application, an extension of time within which to complete the work may be granted. The permit may be revoked at any time for any violation of these chapters.

90.06 **CONNECTION CHARGE.** There shall be a connection charge in the amount of one hundred dollars ($100.00) paid before issuance of a permit to reimburse the City for costs borne by the City in making water service available to the property served.

(Code of Iowa, Sec. 384.84)

90.07 **COMPLIANCE WITH PLUMBING CODE.** The installation of any water service pipe and any connection with the water system shall comply with all pertinent and applicable provisions, whether regulatory, procedural or enforcement provisions, of the *State Plumbing Code*.

90.08 **PLUMBER REQUIRED.** All installations of water service pipes and connections to the water system shall be made by a State-licensed plumber.

90.09 **EXCAVATIONS.** All trench work, excavation and backfilling required in making a connection shall be performed in accordance with applicable excavation provisions as provided for installation of building sewers and/or the provisions of Chapter 135.

90.10 **TAPPING MAINS.** All taps into water mains shall be made by or under the direct supervision of the Superintendent and in accord with the following:

1. **Independent Services.** No more than one house, building or premises shall be supplied from one tap unless special written permission is obtained from the Superintendent and unless provision is made so that each house, building or premises may be shut off independently of the other.

2. **Sizes and Location of Taps.** All mains six (6) inches or less in diameter shall receive no larger than a three-fourths (3/4) inch tap. All mains of over six (6) inches in diameter shall receive no larger than a one inch tap. Where a larger connection than a one inch tap is desired, two (2) or more small taps or saddles shall be used, as the Superintendent shall order. All taps in the mains shall be made at or near the top of the pipe, at least eighteen (18) inches apart. No main shall be tapped nearer than two (2) feet of the joint in the main.

3. **Corporation Stop.** A brass corporation stop, of the pattern and weight approved by the Superintendent, shall be inserted in every tap in the main. The corporation stop in the main shall be of the same size as the service pipe.
4. Location Record. An accurate and dimensional sketch showing the exact location of the tap shall be filed with the Superintendent in such form as the Superintendent shall require. 

(Code of Iowa, Sec. 372.13[4])

90.11 INSTALLATION OF WATER SERVICE PIPE. Water service pipes from the main to the meter setting shall be Type K copper. The use of any other pipe material for the service line shall first be approved by the Superintendent. Pipe must be laid sufficiently waving, and to such depth, as to prevent rupture from settlement or freezing.

90.12 RESPONSIBILITY FOR WATER SERVICE PIPE. All costs and expenses incident to the installation, connection and maintenance of the water service pipe from the curb valve at the property line to the building served shall be borne by the owner. This shall include the repair of the street if the street has to be torn up for repairs to the water service pipe. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation or maintenance of said water service pipe.

90.13 FAILURE TO MAINTAIN. When any portion of the water service pipe which is the responsibility of the property owner becomes defective or creates a nuisance and the owner fails to correct such nuisance the City may do so and assess the costs thereof to the property.

(Code of Iowa, Sec. 364.12[3a & h])

90.14 CURB VALVE. There shall be installed within the public right-of-way a main shut-off valve on the water service pipe of a pattern approved by the Superintendent. The shut-off valve shall be constructed to be visible and even with the pavement or ground.

90.15 INTERIOR VALVE. There shall be installed a shut-off valve on every service pipe inside the building as close to the entrance of the pipe within the building as possible and so located that the water can be shut off conveniently. Where one service pipe supplies more than one customer within the building, there shall be separate valves for each such customer so that service may be shut off for one without interfering with service to the others.

90.16 INSPECTION AND APPROVAL. All water service pipes and their connections to the water system must be inspected and approved in writing by the Superintendent before they are covered, and the Superintendent shall keep a record of such approvals. If the Superintendent refuses to approve the work, the plumber or property owner must proceed immediately to correct the work. Every person who uses or intends to use the municipal water system shall permit the Superintendent to enter the premises to inspect or make necessary alterations or repairs at all reasonable hours and on proof of authority.

90.17 COMPLETION BY THE CITY. Should any excavation be left open or only partly refilled for twenty-four (24) hours after the water service pipe is installed and connected with the water system, or should the work be improperly done, the Superintendent shall have the right to finish or correct the work, and the Council shall assess the costs to the property owner or the plumber. If the plumber is assessed, the plumber must pay the costs before receiving another permit. If the property owner is assessed, such assessment may be collected with and in the same manner as general property taxes.

(Code of Iowa, Sec. 364.12[3a & h])
90.18 SHUTTING OFF WATER SUPPLY. The Superintendent may shut off the supply of water to any customer because of any violation of the regulations contained in these Water Service System chapters that is not being contested in good faith. The supply shall not be turned on again until all violations have been corrected and the Superintendent has ordered the water to be turned on.

90.19 OPERATION OF CURB VALVE AND HYDRANTS. It is unlawful for any person except the Superintendent to turn water on at the curb valve, and no person, unless specifically authorized by the City, shall open or attempt to draw water from any fire hydrant for any purpose whatsoever.
CHAPTER 91
WATER METERS

91.01 Purpose. The purpose of this chapter is to encourage the conservation of water and facilitate the equitable distribution of charges for water service among customers.

91.02 Water Use Metered. All water furnished customers shall be measured through meters.

91.03 Fire Sprinkler Systems - Exception. Fire sprinkler systems may be connected to water mains by direct connection without meters under the direct supervision of the Superintendent. No open connection can be incorporated in the system, and there shall be no valves except a main control valve at the entrance to the building which must be sealed open.

91.04 Location of Meters. All meters shall be so located that they are easily accessible to meter readers and repairmen and protected from freezing.

91.05 Meter Setting. The property owner shall provide all necessary piping and fittings for proper setting of the meter including a valve on the discharge side of the meter. Meter pits may be used only upon approval of the Superintendent and shall be of a design and construction approved by the Superintendent.

91.06 Meter Costs. The full cost of any meter larger than that required for a single-family residence shall be paid to the City by the property owner or customer prior to the installation of any such meter by the City, or, at the sole option of the City, the property owner or customer may be required to purchase and install such meter in accordance with requirements established by the City.

91.07 Meter Repairs. Whenever a water meter owned by the City is found to be out of order the Superintendent shall have it repaired. If it is found that damage to the meter has occurred due to the carelessness or negligence of the customer or property owner, or the meter is not owned by the City, then the property owner shall be liable for the cost of repairs.

91.08 Right of Entry. The Superintendent shall be permitted to enter the premises of any customer at any reasonable time to read, remove, or change a meter.
# CHAPTER 92

## WATER RATES

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**92.01 SERVICE CHARGES.** Each customer shall pay for water service provided by the City based upon use of water as determined by meters described for in Chapter 91. Each location, building, premises, or connection shall be considered a separate and distinct customer whether owned or controlled by the same person or not. In the case of mobile homes that are not converted to real estate and that are located in mobile home parks or on any lot or group of adjacent lots where two or more mobile home owners rent space from the owner of the real estate, there shall be only a single account and billing for such park, lot, or group of adjacent lots. In all cases, the owner of the real estate served by each connection, whether to the property owner or a lessee, shall be responsible for payment for all water services provided to such real estate. Any such properties existing prior to the passage of the ordinance codified by this section will not be required to convert to a single meter unless the Council, at its own discretion, determines delinquencies occurring at the location warrant the conversion.

*(Code of Iowa, Sec. 384.84)*

**92.02 RATES FOR SERVICE.**

1. Effective July 1, 2014. Water will be furnished at the following rates within the City. The minimum base charge for the first 1,500 gallons per month shall be $32.52. All gallons over 1,500 shall pay a rate of $0.00454 per gallon. On or before the 1st day of March of each year, the City Clerk shall compute an adjustment to the water rates based upon the multiplication of the current rate by a factor equal to the increase in the Consumer Price Index (C.P.I.) as established by the Federal Government for the preceding twelve (12) month period of January 1 through December 31. This adjustment shall be submitted to the City Council at the first Council Meeting in March. This increase shall go into effect on the succeeding 1st day of July unless otherwise ordered by the City Council.

2. Effective January 1, 2015. Water will be furnished at the following rates within the City. The minimum base charge for the first 1,500 gallons per month shall be $33.19. All gallons over 1,500 shall pay a rate of $0.00463 per gallon. On or before the 1st day of March of each year, the City Clerk shall compute an adjustment to the water rates based upon the multiplication of the current rate by a factor equal to the increase in the Consumer Price Index (C.P.I.) as established by the Federal Government for the preceding twelve (12) month period of January 1 through December 31. This adjustment shall be submitted to the City Council at the first Council Meeting in March. This increase shall go into effect on the succeeding 1st day of July unless otherwise ordered by the City Council.

*(Ord. 01-2014 – Nov. 14 Supp.)*
92.03 BILLING FOR WATER SERVICE. Water service shall be billed as part of a combined service account, payable in accordance with the following:

(Code of Iowa, Sec. 384.84)

1. Meters Read. Water meters shall be read monthly. Each customer shall read the water meter on his or her premises on or about the 15th day of each month and advise the Billing Clerk of the accurate water meter reading no later than the 20th of the month. Any customer failing to provide this reading to the City in the manner prescribed will be assessed an additional $15.00 charge on the customer’s water bill to compensate the City for the service of reading. If the reading has not been received by the date following the 20th on which the Billing Clerk completes processing all readings on hand, the reading charge will be assessed.

2. Bills Issued. The Billing Clerk shall prepare and issue bills for combined service accounts on or before the 1st day of the month following the date of reading.

3. Bills Payable. Bills for combined service accounts shall be due and payable at the office of the Clerk by the 20th day of the month following the billing period.

4. Late Payment Penalty. Charges not paid when due shall be deemed delinquent and a late penalty of 10% shall be added to the amount of the combined service account bill.

5. Rental Properties. Except as provided in this subsection, the owner of rental property shall be deemed the customer or account holder for water service billing purposes and all bills for water charges shall be directed to such owner. In the case of a residential rental property for which the owner has given notice as provided in Section 92.06, the tenant shall be deemed the customer or account holder for water service billing purposes.

92.04 SERVICE DISCONTINUED. Water service to delinquent customers shall be discontinued in accordance with the following:

(Code of Iowa, Sec. 384.84)

1. Notice. The Billing Clerk shall notify each customer whose account has not been paid by the due date that service will be discontinued if payment of the combined service account, including late payment charges, is not received by the date specified in the notice of delinquency. Such notice shall be sent by ordinary mail to the customer in whose name the delinquent charges were incurred at least twelve (12) days before the date intended for the service discontinuance and shall inform the customer of the nature of the delinquency and afford the customer the opportunity for a hearing before the Water/Sewer Committee prior to the discontinuance.

(Ord. 03-2012 & Sep. 12 Supp.)

2. Notice to Landlords. If the customer is a tenant, and if the owner or landlord of the property or premises has made a written request for notice, the notice of delinquency shall also be given to the owner or landlord. If the customer is a tenant and requests a change of name for service under the account, such request shall be sent to the owner or landlord of the property if the owner or landlord has made a written request for notice of any change of name for service under the account to the rental property.

(Ord. 10-2012 & Sep. 12 Supp.)

3. Hearing. If the customer wishes to appear before the Water and Sewer Committee, the customer shall notify the Clerk not later than five (5) full business days (Monday – Friday, excluding holidays) before the date scheduled for
disconnection. At the customer’s request, the Water and Sewer Committee shall make a determination as to whether the disconnection is justified. The customer has the right to appeal the committee’s decision to the Council, and if the Council finds that disconnection is justified, then such disconnection shall be made, unless payment has been received.

4. Fees. A $35.00 disconnection charge and $35.00 reconnection charge shall be paid before service is restored to a delinquent customer. No fee shall be charged for the usual or customary trips in the regular changes in occupancies of property.

92.05 LIEN FOR NONPAYMENT. The owner of the premises served and any lessee or tenant thereof shall be jointly and severally liable for water service charges to the premises. Water service charges remaining unpaid and delinquent shall constitute a lien upon the premises served and shall be certified by the Clerk to the County Treasurer for collection in the same manner as property taxes.

(Code of Iowa, Sec. 384.84)

92.06 LIEN EXEMPTION.

(Code of Iowa, Sec. 384.84)

1. Water Service Exemption. The lien for nonpayment shall not apply to charges for water service to a residential or commercial rental property where water service is separately metered and the rates or charges for the water service are paid directly to the City by the tenant, if the landlord gives written notice to the City that the property is residential or commercial rental property and that the tenant is liable for the rates or charges. The City may require a deposit not exceeding the usual cost of ninety (90) days of such services to be paid to the City. When the tenant moves from the rental property, the City shall refund the deposit if all service charges are paid in full. The lien exemption does not apply to delinquent charges for repairs related to any of the services.

2. Other Service Exemption. The lien for nonpayment shall also not apply to the charges for any of the services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, and solid waste disposal for a residential rental property where the charge is paid directly to the City by the tenant, if the landlord gives written notice to the City that the property is residential rental property and that the tenant is liable for the rates or charges for such service. The City may require a deposit not exceeding the usual cost of ninety (90) days of such services to be paid to the City. When the tenant moves from the rental property, the City shall refund the deposit if all service charges are paid in full. The lien exemption does not apply to delinquent charges for repairs related to any of the services.

3. Written Notice. The landlord’s written notice shall contain the name of the tenant responsible for charges, the address of the residential or commercial rental property that the tenant is to occupy, and the date that the occupancy begins. Upon receipt, the City shall acknowledge the notice and deposit. A change in tenant for a residential rental property shall require a new written notice to be given to the City within thirty (30) business days of the change in tenant. A change in tenant for a commercial rental property shall require a new written notice to be given to the City within ten (10) business days of the change in tenant. A change in the ownership of the residential rental property shall require written notice of such change to be given to the City within thirty (30) business days of the completion of the change of ownership. A change in the ownership of the commercial rental property shall require
written notice of such change to be given to the City within ten (10) business days of the completion of the change of ownership.

(Ord. 05-2013 – Nov. 14 Supp.)

92.07 LIEN NOTICE. A lien for delinquent water service charges shall not be certified to the County Treasurer unless prior written notice of intent to certify a lien is given to the customer in whose name the delinquent charges were incurred. If the customer is a tenant and if the owner or landlord of the property or premises has made a written request for notice, the notice shall also be given to the owner or landlord. The notice shall be sent to the appropriate persons by ordinary mail not less than thirty (30) days prior to certification of the lien to the County Treasurer.

(Code of Iowa, Sec. 384.84)

92.08 CUSTOMER DEPOSITS. There shall be required from every customer or prospective customer not the owner of the premises served or others having no established credit record, having an unacceptable credit record or having a prior record of failure to pay utility bills a $50.00 deposit intended to guarantee the payment of bills for service.

(Code of Iowa, Sec. 384.84)

92.09 TEMPORARY VACANCY. A property owner may request water service be temporarily discontinued and shut off at the curb valve when the property is expected to be vacant for an extended period of time. There shall be a thirty dollar ($30.00) fee collected for restoring service. During a period when service is temporarily discontinued as provided herein there shall be no minimum service charge. The City will not drain pipes or pull meters for temporary vacancies.

[The next page is 451]
CHAPTER 95
SANITARY SEWER SYSTEM

95.01 Purpose. The purpose of the chapters of this Code of Ordinances pertaining to Sanitary Sewers is to establish rules and regulations governing the treatment and disposal of sanitary sewage within the City in order to protect the public health, safety and welfare.

95.02 Definitions. For use in these chapters, unless the context specifically indicates otherwise, the following terms are defined:

1. “B.O.D.” (denoting Biochemical Oxygen Demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees C., expressed in milligrams per liter or parts per million.

2. “Building drain” means that part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

3. “Building sewer” means that part of the horizontal piping from the building wall to its connection with the main sewer or the primary treatment portion of an on-site wastewater treatment and disposal system conveying the drainage of one building site.

4. “Combined sewer” means a sewer receiving both surface run-off and sewage.

5. “Customer” means any person responsible for the production of domestic, commercial or industrial waste which is directly or indirectly discharged into the public sewer system.

6. “Garbage” means solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage and sale of produce.

7. “Industrial wastes” means the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

8. “Inspector” means the person duly authorized by the Council to inspect and approve the installation of building sewers and their connections to the public sewer system; and to inspect such sewage as may be discharged therefrom.

9. “Natural outlet” means any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

10. “On-site wastewater treatment and disposal system” means all equipment and devices necessary for proper conduction, collection, storage, treatment, and disposal.
of wastewater from four or fewer dwelling units or other facilities serving the equivalent of fifteen persons (1500 gpd) or less.

11. “pH” means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

12. “Public sewer” means a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

13. “Sanitary sewage” means sewage discharging from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories or institutions, and free from storm, surface water, and industrial waste.

14. “Sanitary sewer” means a sewer which carries sewage and to which storm, surface, and groundwaters are not intentionally admitted.

15. “Sewage” means a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present.

16. “Sewage treatment plant” means any arrangement of devices and structures used for treating sewage.

17. “Sewage works” or “sewage system” means all facilities for collecting, pumping, treating, and disposing of sewage.

18. “Sewer” means a pipe or conduit for carrying sewage.

19. “Sewer service charges” means any and all charges, rates or fees levied against and payable by customers, as consideration for the servicing of said customers by said sewer system.

20. “Slug” means any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation.

21. “Storm drain” or “storm sewer” means a sewer which carries storm and surface waters and drainage but excludes sewage and industrial wastes, other than unpolluted cooling water.

22. “Superintendent” means the Superintendent of sewage works and/or of water pollution control of the City or any authorized deputy, agent, or representative.

23. “Suspended solids” means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

24. “Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently.

95.03 SUPERINTENDENT. The Superintendent shall exercise the following powers and duties:

(Code of Iowa, Sec. 372.13[4])

1. Operation and Maintenance. Operate and maintain the City sewage system.

2. Inspection and Tests. Conduct necessary inspections and tests to assure compliance with the provisions of these Sanitary Sewer chapters.
3. Records. Maintain a complete and accurate record of all sewers, sewage connections and manholes constructed showing the location and grades thereof.

95.04 PROHIBITED ACTS. No person shall do, or allow, any of the following:

1. Damage Sewer System. Maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the sewer system.

   (Code of Iowa, Sec. 716.1)

2. Manholes. Open or enter any manhole of the sewer system, except by authority of the Superintendent.

3. Objectionable Wastes. Place or deposit in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage, or other objectionable waste.

4. Septic Tanks. Construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage except as provided in these chapters.

   (Code of Iowa, Sec. 364.12[3f])

5. Untreated Discharge. Discharge to any natural outlet within the City, or in any area under its jurisdiction, any sanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of these chapters.

   (Code of Iowa, Sec. 364.12[3f])

95.05 PROHIBITED DISCHARGES. The Council finds that the discharge of water from any roof, surface ground, sump pump, footing tile, or swimming pool or other natural precipitation into the City sewage system will and has on numerous occasions in the past, flooded and overloaded the sewage system to such an extent as to cause significant and grave damage to the property of large number of City residents. This discharge also affects the sewer plant itself. Such damage is caused by the backup of sewage into living quarters of residents and in addition to other damages creates a hazard to health. The Council, therefore, finds it is essential to the maintenance of health and to minimize damage to property that the provisions of this subsection be strictly enforced to avoid emergencies in the future.

1. Definition and Method. No water from any roof, surface ground, sump pump, footing tile, swimming pool or other natural precipitation shall be discharged into the sanitary sewer system. Dwellings and other buildings and structures which require, because of the infiltration of water into basements, crawl spaces and the like, a sump pump system to discharge excess water, shall have a permanently installed discharge line which shall not at any time discharge water into the sanitary sewer system. A permanent installation shall be one which provides for year-round discharge capability to either the outside of the dwelling, building or structure, or is connected to the City storm sewer, or discharges through the curb and gutter to the street. It shall consist of a rigid discharge line, without valving or quick connections for altering the path of discharge, and if connected to the City storm sewer line shall include a check valve.

2. Disconnection. Any person having a roof, surface ground, sump pump, footing tile or swimming pool now connected and/or discharging into the sanitary sewer system shall disconnect and/or remove the same. Any disconnects or openings in the sanitary sewer shall be closed or repaired in an effective, workmanlike manner, as approved by the inspector.
CHAPTER 95  SANITARY SEWER SYSTEM

3. Inspection. If the City has reason to suspect that an illegal connection may exist in a premises, the owner shall, upon written notice, allow an employee of the City or any designated representative to inspect the buildings to confirm that there is no sump pump or other prohibited discharge into the sanitary sewer system. Any person refusing to allow his or her property to be inspected shall immediately become subject to the surcharge hereinafter provided for. Any property owner found to violate this section shall make the necessary changes to comply with this section and furnish proof of the necessary changes within twenty (20) days after receiving notice on noncompliance.

4. Penalty. A surcharge of one hundred dollars ($100.00) per month is hereby imposed and added to every sewer billing mailed after certified notice that the property owner is in noncompliance. The surcharge will start on the date specified in the certified notice and will be added every month until the property is in compliance. The surcharge shall continue to be levied monthly on properties not complying with this section.

95.06 SEWER CONNECTION REQUIRED. The owners of any houses, buildings, or properties used for human occupancy, employment, recreation or other purposes, situated within the City and abutting on any street, alley or right-of-way in which there is now located, or may in the future be located, a public sanitary or combined sewer, are hereby required to install, at such owner’s expense, suitable toilet facilities therein and a building sewer connecting such facilities directly with the proper public sewer, and to maintain the same all in accordance with the provisions of these Sanitary Sewer chapters, such compliance to be completed within ninety (90) days after date of official notice from the City to do so provided that said public sewer is located within one hundred (100) feet of the property line of such owner and is of such design as to receive and convey by gravity such sewage as may be conveyed to it. Billing for sanitary sewer service will begin the date of official notice to connect to the public sewer.

(Code of Iowa, Sec. 364.12[3f])
(IAC, 567-69.1[3])

95.07 SERVICE OUTSIDE THE CITY. The owners of property outside the corporate limits of the City so situated that it may be served by the City sewer system may apply to the Council for permission to connect to the public sewer upon the terms and conditions stipulated by resolution of the Council.

(Code of Iowa, Sec. 364.4 [2 & 3])

95.08 RIGHT OF ENTRY. The Superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of these Sanitary Sewer chapters. The Superintendent or representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

95.09 USE OF EASEMENTS. The Superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work,
if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

95.10 SPECIAL PENALTIES. The following special penalty provisions shall apply to violations of these Sanitary Sewer chapters:

1. Notice of Violation. Any person found to be violating any provision of these chapters except subsections 1, 3 and 4 of Section 95.04, shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

2. Continuing Violations. Any person who shall continue any violation beyond the time limit provided for in subsection 1 hereof shall be in violation of this Code of Ordinances. Each day in which any such violation shall continue shall be deemed a separate offense.

3. Liability Imposed. Any person violating any of the provisions of these chapters shall become liable to the City for any expense, loss, or damage occasioned the City by reason of such violation.
CHAPTER 96
BUILDING SEWERS AND CONNECTIONS

96.01 Permit. No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City. The application for the permit shall set forth the location and description of the property to be connected with the sewer system and the purpose for which the sewer is to be used, and shall be supplemented by any plans, specifications, or other information considered pertinent. The permit shall require the owner to complete construction and connection of the building sewer to the public sewer within sixty (60) days after the issuance of the permit, except that when a property owner makes sufficient showing that due to conditions beyond the owner’s control or peculiar hardship, such time period is inequitable or unfair, an extension of time within which to comply with the provisions herein may be granted. Any sewer connection permit may be revoked at any time for a violation of these chapters.

96.02 Connection Charge. There shall be a connection charge in the amount of two hundred fifty dollars ($250.00) paid before issuance of a permit to reimburse the City for costs borne by the City in making sewer service available to the property served.

96.03 Plumber Required. All installations of building sewers and connections to the public sewer shall be made by a State-licensed plumber.

96.04 Excavations. All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the City. Pipe laying and backfill shall be performed in accordance with A.S.T.M. Specification C-12, except that no backfill shall be placed until the work has been inspected. The excavations shall be made in accordance with the provisions of Chapter 135 where applicable.

96.05 Connection Requirements. Any connection with a public sanitary sewer must be made under the direct supervision of the Superintendent and in accordance with the following:

1. Old Building Sewers. Old building sewers may be used in connection with new buildings only when they are found, on examination and test conducted by the owner and observed by the Superintendent, to meet all requirements of this chapter.

2. Separate Building Sewers. A separate and independent building sewer shall be provided for every occupied building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway. In such cases the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.
3. Installation. The installation and connection of the building sewer to the public sewer shall conform to the requirements of the State Plumbing Code, applicable rules and regulations of the City, or the procedures set forth in A.S.T.M. Specification C-12. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.

4. Water Lines. When possible, building sewers should be laid at least ten (10) feet horizontally from a water service. The horizontal separation may be less, provided the water service line is located at one side and at least twelve (12) inches above the top of the building sewer.

5. Size. Building sewers shall be sized for the peak expected sewage flow from the building with a minimum building sewer size of four (4) inches.

6. Alignment and Grade. All building sewers shall be laid to a straight line to meet the following:
   A. Recommended grade at one-fourth (¼) inch per foot.
   B. Minimum grade of one-eighth (1/8) inch per foot.
   C. Minimum velocity of 2.00 feet per second with the sewer half full.
   D. Any deviation in alignment or grade shall be made only with the written approval of the Superintendent and shall be made only with approved fittings.

7. Depth. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. The depth of cover above the sewer shall be sufficient to afford protection from frost.

8. Sewage Lifts. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by approved artificial means and discharged to the building sewer.

9. Pipe Specifications. Building sewer pipe shall be free from flaws, splits, or breaks. Materials shall be as specified in the State Plumbing Code except that the building sewer pipe, from the property line to the public sewer, shall comply with the current edition of one of the following:
   A. Clay sewer pipe – A.S.T.M. C-700 (extra strength).
   C. Ductile iron water pipe – A.W.W.A. C-151.

10. Bearing Walls. No building sewer shall be laid parallel to, or within three (3) feet of any bearing wall, which might thereby be weakened.

11. Jointing. Fittings, type of joint, and jointing material shall be compatible with the type of pipe used, subject to the approval of the Superintendent. Solvent-welded joints are not permitted.

12. Unstable Soil. No sewer connection shall be laid so that it is exposed when crossing any watercourse. Where an old watercourse must of necessity be crossed or where there is any danger of undermining or settlement, cast iron soil pipe or vitrified clay sewer pipe thoroughly encased in concrete shall be required for such crossings.
Such encasement shall extend at least six (6) inches on all sides of the pipe. The cast iron pipe or encased clay pipe shall rest on firm, solid material at either end.

13. Preparation of Basement or Crawl Space. No connection for any residence, business or other structure with any sanitary sewer shall be made unless the basement floor is poured, or in the case of a building with a slab or crawl space, unless the ground floor is installed with the area adjacent to the foundation of such building cleared of debris and backfilled. The backfill shall be well compacted and graded so that the drainage is away from the foundation. Prior to the time the basement floor is poured, or the first floor is installed in buildings without basements, the sewer shall be plugged and the plug shall be sealed by the Superintendent. Any accumulation of water in any excavation or basement during construction and prior to connection to the sanitary sewer shall be removed by means other than draining into the sanitary sewer.

96.06 **INTERCEPTORS REQUIRED.** Grease, oil, sludge and sand interceptors shall be provided by gas and service stations, convenience stores, car washes, garages, and other facilities when, in the opinion of the Superintendent, they are necessary for the proper handling of such wastes that contain grease in excessive amounts or any flammable waste, sand or other harmful ingredients. Such interceptors shall not be required for private living quarters or dwelling units. When required, such interceptors shall be installed in accordance with the following:

1. Design and Location. All interceptors shall be of a type and capacity as specified in the *State Plumbing Code*, to be approved by the Superintendent, and shall be located so as to be readily and easily accessible for cleaning and inspection.

2. Construction Standards. The interceptors shall be constructed of impervious material capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers that shall be gastight and watertight.

3. Maintenance. All such interceptors shall be maintained by the owner at the owner’s expense and shall be kept in continuously efficient operations at all times.

96.07 **SEWER TAP.** Connection of the building sewer into the public sewer shall be made at the “Y” branch, if such branch is available at a suitable location. If no properly located “Y” branch is available, a “Y” saddle shall be installed at the location specified by the Superintendent. The public sewer shall be tapped with a tapping machine and a saddle appropriate to the type of public sewer shall be glued and attached with stainless steel clamps to the sewer. At no time shall a building sewer be constructed so as to enter a manhole unless special written permission is received from the Superintendent and in accordance with the Superintendent’s direction if such connection is approved.

96.08 **INSPECTION REQUIRED.** All connections with the sanitary sewer system before being covered shall be inspected and approved, in writing, by the Superintendent. As soon as all pipe work from the public sewer to inside the building has been completed, and before any backfilling is done, the Superintendent shall be notified and the Superintendent shall inspect and test the work as to workmanship and material; no sewer pipe laid under ground shall be covered or trenches filled until after the sewer has been so inspected and approved. If the Superintendent refuses to approve the work, the plumber or owner must proceed immediately to correct the work.
96.09 PROPERTY OWNER'S RESPONSIBILITY. All costs and expenses incident to the installation, connection and maintenance of the building sewer shall be borne by the owner. This shall include repairing any street if the street has to be torn up for repairs to the building sewer. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

96.10 ABATEMENT OF VIOLATIONS. Construction or maintenance of building sewer lines whether located upon the private property of any owner or in the public right-of-way, which construction or maintenance is in violation of any of the requirements of this chapter, shall be corrected, at the owner’s expense, within thirty (30) days after date of official notice from the Council of such violation. If not made within such time the Council shall, in addition to the other penalties herein provided, have the right to finish and correct the work and assess the cost thereof to the property owner. Such assessment shall be collected with and in the same manner as general property taxes.

(Code of Iowa, Sec. 364.12[3])
CHAPTER 97
USE OF PUBLIC SEWERS

97.01 STORM WATER. No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof run-off, sub-surface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer. Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted process waters may be discharged on approval of the Superintendent, to a storm sewer, combined sewer, or natural outlet.

97.02 SURFACE WATERS EXCEPTION. Special permits for discharging surface waters to a public sanitary sewer may be issued by the Council upon recommendation of the Superintendent where such discharge is deemed necessary or advisable for purposes of flushing, but any permit so issued shall be subject to revocation at any time when deemed to the best interests of the sewer system.

97.03 PROHIBITED DISCHARGES. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

1. Flammable or Explosive Material. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.

2. Toxic or Poisonous Materials. Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two (2) milligrams per liter as CN in the wastes as discharged to the public sewer.

3. Corrosive Wastes. Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

4. Solid or Viscous Substances. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

5. Excessive B.O.D., Solids or Flow. Any waters or wastes having (a) a five (5) day biochemical oxygen demand greater than three hundred (300) parts per million by weight, or (b) containing more than three hundred fifty (350) parts per million by weight of suspended solids, or (c) having an average daily flow greater than two (2)
percent of the average sewage flow of the City, shall be subject to the review of the Superintendent. Where necessary in the opinion of the Superintendent, the owner shall provide, at the owner’s expense, such preliminary treatment as may be necessary to (a) reduce the biochemical oxygen demand to three hundred (300) parts per million by weight, or (b) reduce the suspended solids to three hundred fifty (350) parts per million by weight, or (c) control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Superintendent and no construction of such facilities shall be commenced until said approvals are obtained in writing.

97.04 RESTRICTED DISCHARGES. No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Superintendent that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming an opinion as to the acceptability of these wastes, the Superintendent will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances restricted are:

1. **High Temperature.** Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees F (65 degrees C).

2. **Fat, Oil, Grease.** Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of one hundred (100) milligrams per liter or six hundred (600) milligrams per liter of dispersed or other soluble matter.

3. **Viscous Substances.** Water or wastes containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees F (0 and 65 degrees C).

4. **Garbage.** Any garbage that has not been properly shredded, that is, to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (½) inch in any dimension.

5. **Acids.** Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solution whether neutralized or not.

6. **Toxic or Objectionable Wastes.** Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Superintendent for such materials.

7. **Odor or Taste.** Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the Superintendent as necessary, after treatment of the composite sewage, to meet the requirements of state, federal, or other public agencies of jurisdiction for such discharge to the receiving waters.
8. Radioactive Wastes. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable State or Federal regulations.


10. Unusual Wastes. Materials which exert or cause:
   A. Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).
   B. Excessive discoloration (such as, but not limited to dye wastes and vegetable tanning solutions).
   C. Unusual B.O.D., chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
   D. Unusual volume of flow or concentration of wastes constituting “slugs” as defined herein.

11. Noxious or Malodorous Gases. Any noxious or malodorous gas or other substance which either singly or by interaction with other wastes is capable of creating a public nuisance or hazard to life or of preventing entry into sewers for their maintenance and repair.

12. Damaging Substances. Any waters, wastes, materials or substances which react with water or wastes in the sewer system to release noxious gases, develop color of undesirable intensity, form suspended solids in objectionable concentration or create any other condition deleterious to structures and treatment processes.

13. Untreatable Wastes. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

97.05 RESTRICTED DISCHARGES - POWERS. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 97.04 and which in the judgment of the Superintendent may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent may:

1. Rejection. Reject the wastes by requiring disconnection from the public sewage system;

2. Pretreatment. Require pretreatment to an acceptable condition for discharge to the public sewers;

3. Controls Imposed. Require control over the quantities and rates of discharge; and/or

4. Special Charges. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Chapter 99.
97.06 SPECIAL FACILITIES. If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent and subject to the requirements of all applicable codes, ordinances, and laws. Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at the owner’s expense.

97.07 CONTROL MANHOLES. When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at the owner’s expense, and shall be maintained by the owner so as to be safe and accessible at all times.

97.08 TESTING OF WASTES. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a twenty-four (24) hour composite of all outfalls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, B.O.D. and suspended solids analyses are obtained from twenty-four (24) hour composites of all outfalls whereas pH’s are determined from periodic grab samples).
CHAPTER 98

ON-SITE WASTEWATER SYSTEMS

98.01 WHEN PROHIBITED. Except as otherwise provided in this chapter, it is unlawful to construct or maintain any on-site wastewater treatment and disposal system or other facility intended or used for the disposal of sewage.

(Code of Iowa, Sec. 364.12[3f])

98.02 WHEN REQUIRED. When a public sanitary sewer is not available under the provisions of Section 95.05, every building wherein persons reside, congregate or are employed shall be provided with an approved on-site wastewater treatment and disposal system complying with the provisions of this chapter.

(IAC, 567-69.1[3])

98.03 COMPLIANCE WITH REGULATIONS. The type, capacity, location and layout of a private on-site wastewater treatment and disposal system shall comply with the specifications and requirements set forth by the Iowa Administrative Code 567, Chapter 69, and with such additional requirements as are prescribed by the regulations of the County Board of Health.

(IAC, 567-69.1[3 & 4])

98.04 PERMIT REQUIRED. No person shall install or alter an on-site wastewater treatment and disposal system without first obtaining a permit from the County Board of Health.

98.05 DISCHARGE RESTRICTIONS. It is unlawful to discharge any wastewater from an on-site wastewater treatment and disposal system (except under an NPDES permit) to any ditch, stream, pond, lake, natural or artificial waterway, drain tile or to the surface of the ground.

(IAC, 567-69.1[3])

98.06 MAINTENANCE OF SYSTEM. The owner of an on-site wastewater treatment and disposal system shall operate and maintain the system in a sanitary manner at all times and at no expense to the City.

98.07 SYSTEMS ABANDONED. At such time as a public sewer becomes available to a property served by an on-site wastewater treatment and disposal system, as provided in Section 95.05, a direct connection shall be made to the public sewer in compliance with these Sanitary Sewer chapters and the on-site wastewater treatment and disposal system shall be abandoned and filled with suitable material.

(Code of Iowa, Sec. 364.12[3f])
98.08 DISPOSAL OF SEPTAGE. No person shall dispose of septage from an on-site treatment system at any location except an approved disposal site.

98.09 MINIMUM LOT AREA. No permit shall be issued for any on-site wastewater treatment and disposal system employing sub-surface soil absorption facilities where the area of the lot is less than forty thousand (40,000) square feet.
CHAPTER 99

SEWER USE CHARGES

99.01 PURPOSE. It is determined and declared to be necessary and conducive to the protection of the public health, safety, welfare and convenience of the City to collect charges from all users who contribute wastewater to the City’s treatment works. The proceeds of such charges so derived will be used for the purpose of operating, maintaining and retiring the debt for such public wastewater treatment works.

99.02 DEFINITIONS. Unless the context specifically indicates otherwise, the meanings of terms used in this chapter are as follows:

1. “Normal domestic wastewater” means wastewater that has a C.B.O.D. concentration of not more than 300 mg/l, and a suspended solids concentration of not more than 350 mg/l.

2. “Operation and maintenance” means all expenditures during the useful life of the wastewater treatment works for materials, labor, utilities and other items which are necessary for managing and maintaining the treatment works to achieve the capacity and performance for which such works were designed and constructed.

3. “Replacement” means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term “operation and maintenance” includes replacement.

4. “Residential contributor” means any contributor to the City’s treatment works whose lot, parcel of real estate or building is used for domestic dwelling purposes only.

5. “Treatment works” means any devices and systems used for the storage, treatment, recycling and reclamation of municipal sewage, domestic sewage or liquid industrial wastes. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvement, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost, and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or
6. “Useful life” means the estimated period during which a treatment works will be operated.

7. “User charge” means that portion of the total wastewater service charge which is levied in a proportional and adequate manner for the cost of operation, maintenance and replacement of the treatment works.

8. “Water meter” means a water volume measuring and recording device, furnished and/or installed by the City or furnished and/or installed by a user and approved by the City.

99.03 USE OF FUNDS. The user charge system shall generate adequate annual revenues to pay costs of annual operation and maintenance including replacement and costs associated with debt retirement of bonded capital associated with financing the treatment works which the City may by ordinance designate to be paid by the user charge system. That portion of the total user charge which is designated for operation and maintenance including replacement of the treatment works shall be established by this chapter.

99.04 ACCOUNTS DESIGNATED. That portion of the total user charge collected which is designated for operation and maintenance including replacement purposes as established in this chapter shall be deposited in a separate non-lapsing fund known as the Sewer Operation, Maintenance and Replacement Fund and will be kept in two primary accounts as follows:

1. Operation and Maintenance Account. An account designated for the specific purpose of defraying operation and maintenance costs (excluding replacement) of the treatment works.

2. Replacement Account. An account designated for the specific purpose of ensuring replacement needs over the useful life of the treatment works. Deposits in the Replacement Account shall be made monthly from the Operation, Maintenance and Replacement Fund in the amount of $1,800.00.

99.05 YEAR-END BALANCES. Fiscal year-end balances of revenues in excess of operating and maintenance expenses in the Operation and Maintenance Account shall be first used to replace any transfers from other fund sources to meet temporary shortages in the Operation, Maintenance and Replacement Fund. Any remaining fund balance in the Operation and Maintenance Account shall then be transferred to the Replacement Account for future expenditures.

99.06 CHARGES BASED ON USAGE. Each user shall pay for the services provided by the City based on said user’s use of the treatment works as determined by water meters acceptable to the City.

1. Normal Domestic Users. For residential contributors, monthly user charges will be based on the water usage during the billing period.

2. Industrial and Commercial Use. For industrial and commercial contributors, user charges may be based on water used during the current billing period. If a commercial or industrial contributor has a consumptive use of water, or in some other manner uses water which is not returned to the wastewater collection system, the user charge for that contributor may be based on a wastewater meter or separate water
meter installed and maintained at the contributor’s expense, and in a manner acceptable to the City.

**99.07 RATES FOR SERVICE.**

1. Effective July 1, 2014. The minimum base charge for the first 1,500 gallons per month shall be $35.87. In addition, each contributor shall pay a user charge for usage in excess of 1,500 gallons per month at the rate of $.00464 per gallon.

2. Effective January 1, 2015. The minimum base charge for the first 1,500 gallons per month shall be $36.57. In addition, each contributor shall pay a user charge for usage in excess of 1,500 gallons per month at the rate of $.00473 per gallon.

*(Ord. 01-2014 – Nov. 14 Supp.)*

**99.08 SURCHARGE.** For those contributors who contribute wastewater, the strength of which is greater than normal domestic sewage, a surcharge in addition to the normal user charge will be collected. The surcharge for operation and maintenance including replacement is $0.06 per pound C.B.O.D. and $0.05 per pound SS (suspended solids).

**99.09 RESPONSIBILITY FOR INCREASED COSTS.** Any user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge from the City’s treatment works or any user which discharges any substance which singly or by interaction with other substances causes identifiable increases in the cost of operation, maintenance or replacement of the treatment works shall pay for such increased costs. The charge to each such user shall be as determined by the responsible plant operating personnel and approved by the Council.

**99.10 APPLICATION.** The user charge rates established in this chapter apply to all users of the City’s treatment works, regardless of their location.

**99.11 PAYMENT OF BILLS.** All sewer user charges are due and payable under the same terms and conditions provided for payment of a combined service account as contained in Section 92.03 of this Code of Ordinances. Sewer service may be discontinued in accordance with the provisions contained in Section 92.04 if the combined service account becomes delinquent, and the provisions contained in Section 92.07 relating to lien notices shall also apply in the event of a delinquent account.

**99.12 LIEN FOR NONPAYMENT.** Except as provided for in Section 92.06 of this Code of Ordinances, the owner of the premises served and any lessee or tenant thereof shall be jointly and severally liable for sewer service charges to the premises. Sewer user charges remaining unpaid and delinquent shall constitute a lien upon the premises served and shall be certified to the County Treasurer for collection in the same manner as property taxes.

*(Ord. 10-2012 – Sep. 12 Supp.)*

(Code of Iowa, Sec. 384.84 [1])

**99.13 ANNUAL RATE ADJUSTMENT.** On or before February 1 of each year, the City Clerk shall compute an adjustment to the water rates based upon the multiplication of the current rate by a factor equal to the increase in the Consumer Price Index (C.P.I.) as established by the Federal Government for the preceding 12-month period of January 1 through December 31. This adjustment shall be submitted in resolution form to the City
Council at the first Council meeting in February. This increase shall go into effect on the succeeding July 16.

99.14 NOTIFICATION OF RATE CHANGE. The City will notify each user at least annually, in conjunction with a regular bill, of the rate being charged for operation and maintenance including replacement of the treatment works.

99.15 SPECIAL RATES. Where, in the judgment of the Superintendent and the Council, special conditions exist to the extent that the application of the sewer user charge provided in Section 99.07 would be inequitable or unfair to either the City or the person required to pay, a special rate shall be proposed by the Superintendent and submitted to the Council for approval by resolution.

99.16 PRIVATE WATER SYSTEMS. Persons whose premises are served by a private water system shall pay a user charge based upon the water used as determined by the Superintendent either by an estimate agreed to by the person or by metering the water system at the person’s expense. Any negotiated, or agreed upon sales or user charges shall be subject to approval of the Council.

99.17 CUSTOMER DEPOSITS. There shall be required from every customer or prospective customer not the owner of the premises served or others having no established credit record, having an unacceptable credit record or having a prior record of failure to pay utility bills a $50.00 deposit intended to guarantee the payment of bills for service.
CHAPTER 100

STORM WATER DRAINAGE SYSTEM UTILITY

100.01 NAME AND PURPOSE. The purpose of this chapter is to establish the Garnavillo “Storm Water Drainage System Utility”.

100.02 DISTRICT ESTABLISHED. The Garnavillo Storm Water Drainage System Utility District shall include all property and premises located within the confines of the Garnavillo City Limits.

100.03 FUND ESTABLISHED. A City of Garnavillo Utility Fund is hereby established, to be known as the Garnavillo Storm Water Drainage System Utility Fund (Storm Sewer Fund) to collect monies from:

1. All customers who are billed for billed for water, sewer, and solid waste services pursuant to Chapters 90-92, 95-99, & 105-106 of the Code of Ordinances of the City of Garnavillo, Iowa, and
2. The owners of property within the Garnavillo City Limits, not otherwise identified in (1) above.

The fund shall be used to pay the expenses of operation and maintenance of the Garnavillo Storm Water Drainage System Utility and for storm water drainage projects for the benefit of the City of Garnavillo, as determined by the Garnavillo City Council, including, but not limited to, payments on bonds and debt service thereof.

100.04 STORM SEWER FEE. There is hereby established a storm sewer fee in the amount of $2.50 per month for each City residential unit/lot, $6.00 for every commercial/educational/governmental/religious unit, and $10.00 for every industrial unit to fund the Garnavillo “Storm Water Drainage System Utility” Fund. The fee shall be:

1. Added to the customer’s Garnavillo utility account for those customers identified at 100.03(1) above, and
2. By ordinary mail two (2) times each year, in advance, to the persons described in 100.3(2).
3. A residential unit as defined as a single family unit including single family homes, apartment units, and other multi-family living units where a single family lives. There will be a storm utility charge for each single family unit.
4. A commercial/educational/governmental/religious unit is defined as any commercial business, school, educational, government, group home, nursing home, assisted living center, or religious building. There will be a charge for each commercial building. There will be no charge for outside fixed equipment on commercial property (ie: storage bins, elevators, small portable sheds).
5. An industrial unit is defined as any industrial building. There will be a charge for each industrial building.

6. There will be no charge for vacant lots.

7. Property owners will be billed directly for rental properties.

(Subsections 3-7 – Ord. 04-2013 – Nov. 14 Supp.)

100.05 UTILITY SERVICES DISCONTINUED. To the extent the storm sewer fee is billed to a property or premises as a combined service account with any other City utility, all the services may be discontinued if the account becomes delinquent.

100.06 LIEN. Unpaid fees, upon certification to the County Treasurer in conformity with the Iowa Code, shall be a lien upon the property or premises served.

100.07 DEFINITIONS. For purposes of this chapter the following terms are defined:

1. “Waterway”. The path taken by storm water runoff as a result of flows which exceed the capacity of any underground drainage system or for which there is no underground drainage system in place. This path may include streets, channels, or drainage ways, and be located on public or private property.

2. “Structure”. Any object that may impede the natural flow of water, including but not limited to residences, garages, sheds, equipment, dams, berms, trees, shrubs, and bushes.

3. “Adjacent”. For the purposes of this Code chapter, means within the same City block and on the same side of the street or alley as the proposed structure or culvert/tube.

4. “Properly Sized Drainage Structure or Culvert/Tube”. The proper size of any drainage structure or culvert/tube shall be determined by a licensed engineer, unless adjacent drainage structures or culverts/tubes are in place upstream from the proposed structure or culvert/tube, in which event the property owner may install the same size or a larger structure or culvert/tube as the adjacent upstream culvert/tubes and structures. Example: A property owner may install a 12” or larger driveway culvert in the event an adjacent upstream property owner has a 12” driveway tube/culvert. If there are no adjacent culverts/tubes or structures upstream to the proposed culvert/tube or structure, a licensed engineer must approve the size of the culverts/tubes or structures that will be installed.

100.08 PERMIT REQUIRED. No person shall maintain or construct any type of structure over, across, under or through the City of Garnavillo Storm Water Drainage System or any other waterway without having first obtained a Storm Water Drainage System Structure Permit in accordance with the provisions of this section.

1. Any person desiring a permit shall make a written application to the Clerk on forms furnished by the City. The application shall set forth the name and address of the applicant, the name of the person who shall perform the work and such other information as the Clerk may require. At the time of making such application, the applicant shall agree in writing to indemnify and protect the City, its employees, agents, assigns and citizens at all times in connection with the maintenance and/or construction of the structure. The application shall include detailed plans.
2. The Clerk shall approve or deny the application within thirty (30) days of the date it is submitted. Failure of the Clerk to approve the application within thirty (30) days shall be deemed denial. Any person aggrieved by the granting or denial of the application may appeal to the Council.

3. No permit shall be granted except in the following cases:
   A. For walkways or driveways providing ingress and egress from and to parcels adjacent, except for the Storm Water Drainage System Structure, and under the common ownership of the applicant. Properly sized drainage tubes shall be installed to allow storm water to flow under the driveway or walkway.
   B. For walkways or driveways providing ingress and egress from and to property owned by the applicant and a City right-of-way. Properly sized drainage tubes shall be installed to allow storm water to flow under the driveway or walkway.
   C. For means of ingress and egress to applicant’s property for emergency services or freight delivery. Properly sized drainage tubes shall be installed to allow storm water to flow under the driveway or walkway.

4. Special permits may be issued with Council approval on a case-by-case basis for storm drainage projects on City owned right-of-way. Consultation will be held with a storm water engineer for these types of permit requests.

5. Any person aggrieved by the approval or denial of a permit application may appeal to the Council. The appeal must be taken within thirty (30) days of the Clerk’s action on the application. The Council shall fix a time for hearing the appeal, give public notice thereof, and decide the appeal within a reasonable time. At the hearing, any person may appear in person or by agent or attorney. A fee of fifty dollars ($50.00) shall be paid at the time the notice of appeal is filed. An appeal stays all proceedings in furtherance of the action appealed.

6. The permit shall be revocable at the discretion of the City Council and any revocation shall require the immediate cessation of use and removal within thirty (30) days of notification. Upon failure of a property owner to secure a permit in the case of existing structures or upon revocation of a permit, the applicant’s structure shall be removed at applicant’s cost and if applicant fails to do so within the thirty (30) day period, then the City shall remove the structure and assess all costs to the property owner to be levied as taxes upon certification to the County Treasurer in conformity with the Iowa Code.

7. Any person aggrieved by the approval or denial of a permit application may appeal to the Council. The appeal must be taken within thirty (30) days of the Clerk’s action on the application. The Council shall fix a time for hearing the appeal, give public notice thereof, and decide the appeal within a reasonable time. At the hearing, any person may appear in person or by agent or attorney. A fee of fifty dollars ($50.00) shall be paid at the time the notice of appeal is filed. An appeal stays all proceedings in furtherance of the action appealed.

(Sections 100.07 and 100.08 – Ord. 06-2014 – Nov. 14 Supp.)

(Ch. 100 – Ord. 03-2013 – Nov. 14 Supp.)
[The next page is 501]
CHAPTER 105

SOLID WASTE CONTROL

105.01 PURPOSE. The purpose of the chapters in this Code of Ordinances pertaining to Solid Waste Control and Collection is to provide for the sanitary storage, collection, and disposal of solid waste and, thereby, to protect the citizens of the City from such hazards to their health, safety and welfare as may result from the uncontrolled disposal of solid waste.

105.02 DEFINITIONS. For use in these chapters the following terms are defined:

1. “Collector” means any person authorized to gather solid waste from public and private places.

2. “Discard” means to place, cause to be placed, throw, deposit, or drop.  
   (Code of Iowa, Sec. 455B.361[2])

3. “Dwelling unit” means any room or group of rooms located within a structure and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating.

4. “Garbage” means all solid and semisolid, putrescible animal and vegetable waste resulting from the handling, preparing, cooking, storing, serving and consuming of food or of material intended for use as food, and all offal, excluding useful industrial by-products, and includes all such substances from all public and private establishments and from all residences.  
   (IAC, 567-100.2)

5. “Landscape waste” means any vegetable or plant waste except garbage. The term includes trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, and yard trimmings.  
   (IAC, 567-20.2[455B])

6. “Litter” means any garbage, rubbish, trash, refuse, waste materials, or debris.  
   (Code of Iowa, Sec. 455B.361[1])

7. “Owner” means, in addition to the record titleholder, any person residing in, renting, leasing, occupying, operating or transacting business in any premises, and as between such parties the duties, responsibilities, liabilities and obligations hereinafter imposed shall be joint and several.

8. “Refuse” means putrescible and non-putrescible waste, including but not limited to garbage, rubbish, ashes, incinerator residues, street cleanings, market and industrial solid waste and sewage treatment waste in dry or semisolid form.  
   (IAC, 567-100.2)

10. “Residential waste” means any refuse generated on the premises as a result of residential activities. The term includes landscape waste grown on the premises or deposited thereon by the elements, but excludes garbage, tires, trade wastes and any locally recyclable goods or plastics.

   (IAC, 567-20.2(455B))

11. “Rubbish” means non-putrescible solid waste consisting of combustible and non-combustible waste, such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind.

   (IAC, 567-100.2)

12. “Sanitary disposal” means a method of treating solid waste so that it does not produce a hazard to the public health or safety or create a nuisance.

   (IAC, 567-100.2)

13. “Sanitary disposal project” means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the Director of the State Department of Natural Resources.

   (Code of Iowa, Sec. 455B.301)

14. “Solid waste” means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by Section 321.1 of the Code of Iowa. Solid waste does not include any of the following:

   (Code of Iowa, Sec. 455B.301)


   B. Hazardous waste as defined in Section 455B.411 of the Code of Iowa, except to the extent that rules allowing for the disposal of specific wastes have been adopted by the State Environmental Protection Commission.

   C. Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

   D. Petroleum contaminated soil that has been remediated to acceptable State or Federal standards.

   E. Steel slag which is a product resulting from the steel manufacturing process and is managed as an item of value in a controlled manner and not as a discarded material.

   (Ord. 07-2014 – Nov. 14 Supp.)

105.03 SANITARY DISPOSAL REQUIRED. It is the duty of each owner to provide for the sanitary disposal of all refuse accumulating on the owner’s premises before it becomes a nuisance. Any such accumulation remaining on any premises for a period of more than thirty (30) days shall be deemed a nuisance and the City may proceed to abate such nuisances in accordance with the provisions of Chapter 50 or by initiating proper action in district court.

   (Code of Iowa, Ch. 657)
105.04 HEALTH AND FIRE HAZARD. It is unlawful for any person to permit to accumulate on any premises, improved or vacant, or on any public place, such quantities of solid waste that constitute a health, sanitation or fire hazard.

105.05 OPEN BURNING RESTRICTED. No person shall allow, cause or permit open burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack, except that open burning is permitted in the following circumstances:

(IAC, 567-23.2[455B] and 567-100.2)

1. Disaster Rubbish. The open burning of rubbish, including landscape waste, for the duration of the community disaster period in cases where an officially declared emergency condition exists, provided that the burning of any structures or demolished structures is conducted in accordance with 40 CFR Section 61.145.

(IAC, 567-23.2[3a])

2. Trees and Tree Trimings. The open burning of trees and tree trimings at a City-operated burning site, provided such burning is conducted in compliance with the rules established by the State Department of Natural Resources.

(IAC, 567-23.2[3b])

3. Flare Stacks. The open burning or flaring of waste gases, provided such open burning or flaring is conducted in compliance with applicable rules of the State Department of Natural Resources.

(IAC, 567-23.2[3c])

4. Landscape Waste. The disposal by open burning of landscape waste originating on the premises shall be limited to areas located at least one-fourth (¼) mile from any building inhabited. However, the burning of landscape waste produced in clearing, grubbing and construction operations shall be limited to areas located at least one-fourth (¼) mile from any building inhabited by other than the landowner or tenant conducting the open burning. Rubber tires shall not be used to ignite landscape waste.

(IAC, 567-23.2[3d])

5. Recreational Fires. Open fires for cooking, heating, recreation, and ceremonies, provided they comply with the limits for emission of visible air contaminants established by the State Department of Natural Resources and with the following regulations:

A. No material(s) other than wood or charcoal shall be burned in a recreational fire.

B. Recreational fires must be contained in a metal, brick, stone, or masonry fire ring or pit of not more than four (4) feet in diameter or four (4) feet square.

C. Recreational fires must be no closer than fifteen (15) feet from any house or building measured from the structure's foundation or base to the edge of the fire ring or pit.

D. Recreational fires must not be left unattended at any time.

(Ord. 08-2012 – Sep. 12 Supp.)

6. Training Fires. Fires set for the purpose of conducting bona fide training of public or industrial employees in firefighting methods, provided that the training fires...
are conducted in compliance with rules established by the State Department of Natural Resources.

(IAC, 567-23.2[3g])

7. Pesticide Containers and Seed Corn Bags. The disposal by open burning of paper or plastic pesticide containers (except those formerly containing organic forms of beryllium, selenium, mercury, lead, cadmium or arsenic) and seed corn bags resulting from farming activities occurring on the premises if burned in accordance with rules established by the State Department of Natural Resources.

(IAC, 567-23.2[3h])

8. Agricultural Structures. The open burning of agricultural structures if in accordance with rules and limitations established by the State Department of Natural Resources.

(IAC, 567-23.2[3i])

9. Controlled Burning of a Demolished Building. The controlled burning of a demolished building by the City, subject to approval of the Council, provided that the controlled burning is conducted in accordance with rules and limitations established by the State Department of Natural Resources.

(IAC, 567-23.2[3j])

10. Variance. Any person wishing to conduct open burning of materials not permitted herein may make application for a variance to the Director of the State Department of Natural Resources.

(IAC, 567-23.2[2])

In no event shall any person burn or cause to be burned any materials on any public or private land within two hundred (200) feet of any magazine or tank used to store flammable materials of any nature or description or within dangerous proximity of any building or structure within the City.

105.06 SEPARATION OF YARD WASTE REQUIRED. All yard waste shall be separated by the owner or occupant from all other solid waste accumulated on the premises and shall be composted or burned on the premises (only if ¼ mile or more from a building) or taken to a City compost site, if available. As used in this section, “yard waste” means any debris such as grass clippings, leaves, garden waste, brush and trees. Yard waste does not include tree stumps.

105.07 LITTERING PROHIBITED. No person shall discard any litter onto or in any water or land, except that nothing in this section shall be construed to affect the authorized collection and discarding of such litter in or on areas or receptacles provided for such purpose. When litter is discarded from a motor vehicle, the driver of the motor vehicle shall be responsible for the act in any case where doubt exists as to which occupant of the motor vehicle actually discarded the litter.

(Code of Iowa, Sec. 455B.363)

105.08 OPEN DUMPING PROHIBITED. No person shall dump or deposit or permit the dumping or depositing of any solid waste on the surface of the ground or into a body or stream of water at any place other than a sanitary disposal project approved by the Director of the State Department of Natural Resources, unless a special permit to dump or deposit solid waste on land owned or leased by such person has been obtained from the Director of the State Department of Natural Resources. However, this section does not prohibit the use of rubble at places other than a sanitary disposal project. “Rubble” means dirt, stone, brick, or similar
inorganic materials used for beneficial fill, landscaping, excavation, or grading at places other than a sanitary disposal project. Rubble includes asphalt waste only as long as it is not used in contact with water in a floodplain. For purposes of this section, rubble does not mean gypsum or gypsum wallboard, coal combustion residue, foundry sand, or industrial process wastes unless those wastes are approved by the State Department of Natural Resources.

(Code of Iowa, Sec. 455B.301, Sec. 455B.307 and IAC, 567-100.2)

105.09 TOXIC AND HAZARDOUS WASTE. No person shall deposit in a solid waste container or otherwise offer for collection any toxic or hazardous waste. Such materials shall be transported and disposed of as prescribed by the Director of the State Department of Natural Resources. As used in this section, “toxic and hazardous waste” means waste materials, including but not limited to, poisons, pesticides, herbicides, acids, caustics, pathological waste, flammable or explosive materials and similar harmful waste which requires special handling and which must be disposed of in such a manner as to conserve the environment and protect the public health and safety.

(IAC, 567-100.2)

(IAC, 567-102.13[2] and 400-27.14[2])

105.10 WASTE STORAGE CONTAINERS. Every person owning, managing, operating, leasing or renting any premises, dwelling unit or any place where refuse accumulates shall provide and at all times maintain in good order and repair portable containers for refuse in accordance with the following:

1. Container Specifications. Waste storage containers shall comply with the following specifications:

   A. Residential. Residential waste containers, whether they be reusable, portable containers or heavy-duty disposable garbage bags, shall be of not less than twenty (20) gallons or more than thirty-five (35) gallons in nominal capacity, and shall be leakproof and waterproof. The total weight of any container and contents shall not exceed seventy-five (75) pounds. Disposable containers shall be kept securely fastened and shall be of sufficient strength to maintain integrity when lifted, and reusable containers shall be in conformity with the following:

      (1) Be fitted with a fly-tight lid which shall be kept in place except when depositing or removing the contents of the container;
      (2) Have handles, bail or other suitable lifting devices or features;
      (3) Be of a type originally manufactured for the storage of residential waste with tapered sides for easy emptying;
      (4) Be of lightweight and sturdy construction.

Galvanized metal containers, rubber or fiberglass containers and plastic containers which do not become brittle in cold weather may be used.

B. Commercial. Every person owning, managing, operating, leasing or renting any commercial premises where an excessive amount of refuse accumulates and where its storage in portable containers as required above is impractical, shall maintain metal bulk storage containers approved by the City.
2. **Storage of Containers.** Residential solid waste containers shall be stored upon the residential premises. Commercial solid waste containers shall be stored upon private property, unless the owner has been granted written permission from the City to use public property for such purposes. The storage site shall be well drained; fully accessible to collection equipment, public health personnel and fire inspection personnel. All owners of residential and commercial premises shall be responsible for proper storage of all garbage and yard waste to prevent materials from being blown or scattered around neighboring yards and streets.

3. **Location of Containers for Collection.** Containers for the storage of solid waste awaiting collection shall be placed outdoors at some easily accessible place by the owner or occupant of the premises served.

4. **Nonconforming Containers.** Solid waste placed in containers which are not in compliance with the provisions of this section will not be collected.

### 105.11 PROHIBITED PRACTICES

It is unlawful for any person to:

1. **Unlawful Use of Containers.** Deposit refuse in any solid waste containers not owned by such person without the written consent of the owner of such containers.

2. **Interfere with Collectors.** Interfere in any manner with solid waste collection equipment or with solid waste collectors in the lawful performance of their duties as such, whether such equipment or collectors be those of the City, or those of any other authorized waste collection service.

3. **Incinerators.** Burn rubbish or garbage except in incinerators designed for high temperature operation, in which solid, semisolid, liquid or gaseous combustible refuse is ignited and burned efficiently, and from which the solid residues contain little or no combustible material, as acceptable to the Environmental Protection Commission.

4. **Scavenging.** Take or collect any solid waste which has been placed out for collection on any premises, unless such person is an authorized solid waste collector.

### 105.12 SANITARY DISPOSAL PROJECT DESIGNATED

The sanitary landfill facilities operated by Winneshiek County are hereby designated as the official “Public Sanitary Disposal Project” for the disposal of solid waste produced or originating within the City.

### 105.13 PENALTIES

Any violation of this chapter shall be deemed to be a municipal infraction, subject to such penalties as provided by the Iowa Code Section 364.22 and Chapter 3 of the Code of Ordinances of Garnavillo, Iowa. *(Ord. 08-2012 – Sep. 12 Supp.)*
CHAPTER 106

COLLECTION OF SOLID WASTE

106.01 COLLECTION SERVICE. The City shall provide by contract for the collection of solid waste, except bulky rubbish as provided in Section 106.05, from residential premises only. The owners or operators of commercial, industrial or institutional premises shall provide for the collection of solid waste produced upon such premises.

106.02 COLLECTION VEHICLES. Vehicles or containers used for the collection and transportation of garbage and similar putrescible waste or solid waste containing such materials shall be leakproof, durable and of easily cleanable construction. They shall be cleaned to prevent nuisances, pollution or insect breeding and shall be maintained in good repair.

(IAC, 567-104.9[455B])

106.03 LOADING. Vehicles or containers used for the collection and transportation of any solid waste shall be loaded and moved in such a manner that the contents will not fall, leak, or spill therefrom, and shall be covered to prevent blowing or loss of material. Where spillage does occur, the material shall be picked up immediately by the collector or transporter and returned to the vehicle or container and the area properly cleaned.

106.04 FREQUENCY OF COLLECTION. All solid waste shall be collected from residential premises at least once each week and from commercial, industrial and institutional premises as frequently as may be necessary, but not less than once each week.

106.05 BULKY RUBBISH. Bulky rubbish which is too large or heavy to be collected in the normal manner of other solid waste may be collected by the collector upon request in accordance with procedures therefor established by the Council.

106.06 RIGHT OF ENTRY. Solid waste collectors are hereby authorized to enter upon private property for the purpose of collecting solid waste therefrom as required by this chapter; however, solid waste collectors shall not enter dwelling units or other residential buildings.

106.07 CONTRACT REQUIREMENTS. No person shall engage in the business of collecting, transporting, processing or disposing of solid waste from residential premises for the City without first entering into a contract with the City. This section does not prohibit an owner from transporting solid waste accumulating upon premises owned, occupied or used by such owner, provided such refuse is disposed of properly in an approved sanitary disposal project. Furthermore, a contract is not required for the removal, hauling, or disposal of earth and rock material from grading or excavation activities, provided that all such materials are conveyed in tight vehicles, trucks or receptacles so constructed and maintained that none of the material being transported is spilled upon any public right-of-way.
106.08 COLLECTION FEES. The collection and disposal of solid waste as provided by this chapter are declared to be beneficial to the property served or eligible to be served and there shall be levied and collected fees therefor in accordance with the following:

(Goreham vs. Des Moines, 1970, 179 NW 2nd, 449)

1. Fee for Collection. The fee for solid waste collection and disposal service, used or available, is $14.00 per month for single occupancy residences and $15.00 per month for all other residential and small business premises. This rate will automatically increase by the same percentage increase as the rate paid by the City to the contractor providing the solid waste collection service to the City.

2. Payment of Bills. All fees are due and payable under the same terms and conditions provided for payment of a combined service account as contained in Section 92.03 of this Code of Ordinances. Solid waste collection service may be discontinued in accordance with the provisions contained in Section 92.04 if the combined service account becomes delinquent, and the provisions contained in Section 92.07 relating to lien notices shall also apply in the event of a delinquent account.

(Ord. 02-2010 – Oct. 10 Supp.)

106.09 LIEN FOR NONPAYMENT. Except as provided for in Section 92.06 of this Code of Ordinances, the owner of the premises served and any lessee or tenant thereof are jointly and severally liable for fees for solid waste collection and disposal. Fees remaining unpaid and delinquent shall constitute a lien upon the premises served and shall be certified by the Clerk to the County Treasurer for collection in the same manner as property taxes.

(Code of Iowa, Sec. 384.84)

(Ord. 10-2012 – Sep. 12 Supp.)

[The next page is 535]
CHAPTER 110
NATURAL GAS FRANCHISE

110.01 FRANCHISE GRANTED. The City of Garnavillo, Iowa (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy, a Delaware limited liability corporation (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over, above or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public easements as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, poles, communication devices, conduits and all other apparatus and appliances necessary or convenient for transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

110.02 TERM. The rights and privileges granted hereunder shall remain in effect for a period of twenty five (25) years from the effective date of the ordinance codified by this chapter.†

110.03 FRANCHISE FEES OR TAXES.

1. The City of Garnavillo, Iowa, hereby establishes a franchise fee on every natural gas or electric company and every other person, firm or corporation, their successors and assigns, owning, operating, controlling, leasing or managing a natural gas or electric plant or system and/or generating, manufacturing, selling, distributing or transporting natural gas or electric (hereinafter referred to, collectively, as “Energy Providers,” each, individually, an “Energy Provider”). Energy Providers shall collect from their customers located within the corporate limits of the Municipality as depicted on the Map (as defined below) including the City of City and pay to the City an amount equal to three percent (3%) of gross receipts Energy Providers derive from the sale, distribution or transportation of natural gas or electric delivered within the present limits of the Municipality. Gross receipts as used herein are revenues received from the sale, distribution or transportation of natural gas or electric, after adjustment

†EDITOR’S NOTE: Ordinance No. 02-2014 adopting a natural gas franchise for the City was passed and adopted on July 12, 2014.
for the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

2. The amount paid by Energy Providers shall be in lieu of, and Energy Providers shall be exempt from, all other fees, charges, taxes or assessments which the Municipality may impose for the privilege of doing business within the Municipality, including, without limitation, excise taxes, occupation taxes, licensing fees, or right-of-way permit fees, and in the event the Municipality imposes any such fee, charge, tax or assessment, the payment to be made by Energy Providers in accordance with this chapter shall be reduced in an amount equal to any such fee, charge, tax or assessment imposed upon the Energy Providers. Ad valorem property taxes imposed generally upon all real and personal property within the Municipality shall not be deemed to affect Energy Providers’ obligations under this chapter.

3. Energy Providers shall report and pay any amount payable under this chapter on a monthly basis. Such payment shall be made no more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of any franchise granted by the City of Garnavillo, Iowa, to an Energy Provider.

4. Energy Providers shall list the franchise fee collected from customers as a separate item on bills for utility service issued to their customers. If at any time the Iowa Utilities Board or other authority having proper jurisdiction prohibits such recovery, Energy Providers will no longer be obligated to collect and pay the franchise fee until an alternate lawful franchise fee can be negotiated and implemented. In addition, with prior approval of City, Energy Providers may reduce the franchise fee payable for natural gas or electric delivered to a specific customer when such reduction is required to attract or retain the business of that customer.

5. Within ten (10) days of the date of the ordinance codified in this chapter, the Municipality shall provide the Energy Providers with a map of its corporate limits (the “Map”). The Map shall be of sufficient detail to assist Energy Providers in determining whether their customers reside within the Municipality’s corporate limits. The Map along with Energy Provider’s Geographic Information System (“GIS”) mapping information shall serve as the sole basis for determining Energy Provider’s obligation hereunder to collect and pay the franchise fee from customers; provided, however, that if the Municipality’s corporate limits are changed by annexation or otherwise, it shall be the Municipality’s sole responsibility to (a) update the Map so that such changes are included therein, and (b) provide the updated Map to the Energy Providers. An Energy Provider’s obligation to collect and pay the franchise fee from customers within an annexed area shall not commence until the later: (a) of sixty (60) days after such Energy Provider’s receipt from the Municipality of an updated Map including such annexed area, or (b) such time after such Energy Provider’s receipt from the Municipality of an updated Map including such annexed area as is reasonably necessary for such Energy Provider to identify the customers in the annexed area obligated to pay the franchise fee.

6. The City shall provide copies of annexation ordinances to Energy Providers on a timely basis to ensure appropriate Franchise fee collection from customers within the corporate limits of the City as set forth in subsection 4 above.

7. The Municipality shall have access to and the right to examine, during normal business hours, Energy Provider’s books, receipts, files, records and documents as is reasonably necessary to verify the accuracy of payments due hereunder; provided, that
the Municipality shall not exercise such right more than twice per calendar year. If it is determined that a mistake was made in the payment of any franchise fee required hereunder, such mistake shall be corrected promptly upon discovery such that any under-payment by an Energy Provider shall be paid within thirty (30) days of recalculation of the amount due, and any over-payment by an Energy Provider shall be deducted from the next payment of such franchise fee due by such Energy Provider to the Municipality; provided, that neither party shall have the obligation to correct a mistake that is discovered more than one (1) year after the occurrence thereof.

110.04 GOVERNING RULES AND REGULATIONS. The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by State or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall renegotiate the terms of this franchise in accordance with the action taken. In determining the rights and duties of the Grantee, the terms of this franchise shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the Grantor.

110.05 PROVISION FOR INADEQUATE ENERGY SUPPLIES. If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

110.06 CONSTRUCTION AND MAINTENANCE OF GRANTEE’S FACILITIES. Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

Grantee agrees that for the term of this franchise, it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance and will fix its excavations within a commercially reasonable time period, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible. Within a reasonable time thereafter, Grantee shall request and Grantor shall issue any permits or authorizations required by Grantor for the actions conducted by Grantee during the emergency situation.
Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee’s facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Grantee as soon as practical in advance of the actual commencement of the work, considering seasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

110.07 EXTENSION OF GRANTEES FACILITIES. Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria as approved by the Iowa Utilities Board make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor.

110.08 RELOCATION OF GRANTEES FACILITIES. If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, unless otherwise reimbursed by federal, State or local legislative act or governmental agency, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference with Grantors facilities.

If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference with such project, then Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment.

Grantor shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. If alternative public right-of-way space if available, Grantor shall also provide a reasonable alternative location for Grantees facilities. Grantor shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of-way until it (a) if applicable, receives the reasonable cost of relocating the same and (b) obtains a reasonable public right-of-way, dedicated utility easement, or private easement alternative location for such facilities.

110.09 CONFIDENTIAL INFORMATION. Grantor acknowledges that certain information it might request from Grantee pursuant to this chapter may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

110.10 FORCE MAJEURE. It shall not be a breach or default under this chapter if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: 1) physical events such as acts of God,
landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

110.11 HOLD HARMLESS. Grantee, during the term of this franchise, agrees to save harmless Grantor from and against all claims, demands, losses and expenses arising directly out of the negligence of Grantee, its employees or agents, in constructing, operating, and maintaining its distribution and transmission facilities or equipment; provided, however, that Grantee need not save Grantor harmless from claims, demands, losses and expenses arising out of the negligence of Grantor, its employees or agents.

110.12 SUCCESSORS AND ASSIGNS. All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee’s lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee’s lessees, successors and assigns.

110.13 NO THIRD PARTY BENEFICIARIES. This chapter constitutes a franchise agreement between the Grantor and Grantee. No provision of this chapter shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

110.14 NON-WAIVER. Any waiver of any obligation or default under this chapter shall not be construed as a waiver of any future defaults, whether of like or different character.

(Ch. 110 – Ord. 02-2014 – Nov. 14 Supp.)
CHAPTER 111

ELECTRIC FRANCHISE

111.01 FRANCHISE GRANTED. There is hereby granted to INTERSTATE POWER AND LIGHT COMPANY, hereinafter referred to as the “Company,” its successors and assigns, the right and franchise to acquire, construct, reconstruct, erect, maintain and operate in the City, works and plants for the manufacture and generation of electricity and a distribution system for electric light, heat and power and the right to erect and maintain the necessary poles, lines, wires, conduits and other appliances for the distribution of electric current along, under and upon the streets, alleys and public places in the said City to supply individuals, corporations, communities, and municipalities both inside and outside of said City with electric light, heat and power for the period of twenty-five (25) years; also the right of eminent domain as provided in Section 364.2 of the Code of Iowa.

111.02 POLES AND WIRES; INDEMNIFICATION. The poles, lines, wires, circuits, and other appliances shall be placed and maintained so as not to unnecessarily interfere with the travel on said streets, alleys and public places in said City nor unnecessarily interfere with the proper use of the same, including ordinary drainage, or with the sewers, underground pipe and other property of the City. The said Company, its successors and assigns shall hold the City free and harmless from all damages to the extent arising from the negligent acts or omissions of the Company in the erection or maintenance of said system.

111.03 EXCAVATIONS. In making any excavations in any street, alley, or public place, Company, its successors and assigns, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, and shall back fill all openings in such manner as to prevent settling or depressions in surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical. The Company shall not be required to restore or modify public right of way, sidewalks or other areas in or adjacent to the Company project to a condition superior to its immediate previously existing condition.

111.04 CONSTRUCTION AND MAINTENANCE. The Company shall, at its cost, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement thereof, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement.

If the City orders or requests the Company to relocate its existing facilities or equipment for any reason other than as specified above, or as the result of the initial request of a commercial or private developer, the Company shall receive payment for the cost of such relocation as a precondition to relocating its existing facilities or equipment.
The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause the Company unreasonable additional expense in exercising its authority under this section. The City shall also provide a reasonable alternative location for the Company’s facilities as part of its relocation request.

Prior to the City abandoning or vacating any street, avenue, alley or public ground where the Company has electric facilities, the City shall grant the Company a utility easement for said facilities. If the City fails to grant the Company a utility easement for said facilities prior to abandoning or vacating a street, avenue, alley or public place, the City shall at its cost and expense obtain easements for existing Company facilities. The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right of way that have been relocated at Company expense at the direction of the City in the previous ten years.

111.05 TRIMMING OF TREES. The Company is authorized and empowered to prune or remove at Company expense any tree extending into any street, alley or public grounds to maintain electric reliability, safety, to restore utility service and to prevent limbs, branches or trunks from interfering with the wires and facilities of the Company. The pruning and removal of trees shall be performed in accordance with Company’s then current line clearance vegetation plan as filed and approved by the Iowa Utility Board, as well as all applicable codes and standards referenced therein.

111.06 SYSTEM REQUIREMENTS. During the term of this franchise, the Company shall furnish electric energy in accordance with the applicable regulations of the Iowa Utilities Board and the Company’s tariffs. The Company will maintain compliance with Iowa Utilities Board regulatory standards for reliability.

111.07 NONEXCLUSIVE. The franchise granted by this chapter shall not be exclusive.

111.08 CONTINUOUS SERVICE. Service to be rendered by the Company under this franchise shall be continuous unless prevented from doing so by fire, acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Company’s equipment, and in such event service shall be resumed as quickly as is reasonably possible.

111.09 FRANCHISE FEE.

1. In its monthly billing the Company shall include a franchise fee of three percent (3%) on the gross receipts from the sale of electricity to the Company’s electric customers located within the corporate limits of the City.

2. The franchise fee shall be applied to all customers’ bills in accordance with Iowa Code Chapter 364.2 and 423B.5. The amount of the franchise fee shall be shown separately on the utility bill to each customer.

3. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety (90) days of receipt of information required of the City to implement the franchise fee. This information shall include but not be limited to a copy of the City’s Revenue Purpose Statement and written proof of legal adoption and publication of the Revenue Purpose Statement, City’s list of City utility accounts exempt per Iowa law from the franchise fee, signed Nondisclosure Agreement pertaining to the protection of the confidentiality of utility service address information provided by the Company to the City, and the City’s verified utility customer service address list. The Company shall
not commence assessing the franchise fee until it has received written approval of the amended tax rider tariff from the Iowa Utilities Board.

4. The City recognizes that the costs of franchise fee administration are not charged directly to the City and the City and Company agree that the Company may only charge such administrative fees as are provided for in State statute.

5. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the corporate limits of said City, the City Clerk shall provide written notification by certified mail to an officer of Company of such annexation or change in the limits of said City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in the corporate limits of the City, commencing on an agreed upon date which is not less than ninety (90) days from receipt of the information required of the City to implement the franchise fee.

The Company shall have no obligation to collect franchise fees from customers in any annexed area until and unless the following have all been provided to the Company by certified mail: such final and unappealable orders or approvals, the City’s list of City utility accounts exempt from the franchise fee in the annexed area, and the City’s verified utility customer service address list for the annexed area.

6. The City shall indemnify the Company from claims of any nature arising out of or related to the imposition and collection of the franchise fee. In addition, the Company shall not be liable for collecting franchise fees from any customer originally or subsequently identified, or incorrectly identified, by the City as being subject to the franchise fee or being exempt from the imposition of franchise fees.

7. The Company shall remit franchise fee receipts to the City no more frequently than on or before the last business day of the month following each calendar year quarter. Company shall notify City at least thirty (30) days in advance of any changes made in this collection schedule, including any alterations in the calendar quarters or any other changes in the remittance periods.

8. The City shall give the Company a minimum 6-month notice prior to the request to implement any adjustment in the percentage of franchise fee to be collected pursuant to subsection 1 hereof. The City agrees to modify the level of franchise fees imposed only once in any 24-month period. When any such ordinance increasing, decreasing, modifying or eliminating the franchise fee shall become effective, billings reflecting the change shall commence on an agreed upon date which is not less than ninety (90) days following written notice to the Company by certified mail. The Company shall not be required to implement such new percentage unless and until it determines that it has received appropriate official documentation of final action by the City Council. In no event may the percentage of franchise fee exceed the statutory amount authorized by Iowa law.

9. The City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such fees as collected for a purpose as allowed by applicable law.

10. The Company shall not, under any circumstances be required to return or refund any franchise fees that have been collected from City customers and remitted to the City. In the event the Company is required to provide data or information in defense of the City’s imposition of franchise fees or the Company is required to assist the City in identifying customers or calculating any franchise fee refunds for groups of
customers or individual customers, the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information.

11. Collection of the franchise fee shall cease at the earlier of the modification or repeal of the franchise fee or the end of the franchise term.

A. The obligation to collect and remit the fee imposed by this chapter is modified if:

(1) Any other person is authorized to sell electricity to customers within the corporate limits of the City and the City imposes a franchise fee or its lawful equivalent at zero or a lesser rate than provided in this chapter, in which case the obligation of Company to collect and remit franchise fee shall be modified to zero or the lesser rate; or

(2) The City adds additional territory by annexation or consolidation and is unable or unwilling to impose the franchise fee upon all persons selling electricity to consumers within the additional territory, in which case the franchise fee imposed on the revenue from sales by Company in the additional territory shall be three percent or equal to that of the lowest fee being paid by any other retail seller of electricity within the City; or

(3) The Iowa General Assembly enacts legislation, or any Iowa court issues a final judicial decision regarding franchise fees, or the Iowa Utilities Board issues a final nonappealable order (collectively, “Final Franchise Fee Action”) that modifies, but does not repeal, the ability of the City to impose a franchise fee or the ability of Company to collect from City customers and remit franchise fees to City. Within sixty (60) days of Final Franchise Fee Action, the City shall notify Company and the parties shall meet to determine whether this chapter can be revised, and, if so, how to revise the franchise fee on a continuing basis to meet revised legal requirements. After Final Franchise Fee Action and until passage by the City of revisions to the franchise fee ordinance, Company may temporarily discontinue collection and remittance of the franchise fee if in its sole opinion it believes it is required to do so in order to comply with revised legal requirements.

B. The obligation to collect and remit the fee imposed by this chapter is repealed, effective as of the date specified in the franchise ordinance with no liability therefor, if:

(1) Any of the imposition, collection or remittance of a franchise fee is ruled to be unlawful by the Supreme Court of Iowa, effective as of the date of such ruling or as may be specified by that Court; or

(2) The Iowa General Assembly enacts legislation making imposition, collection or remittance of a franchise fee unlawful, effective as of the date lawfully specified by the General Assembly; or

(3) The Iowa Utilities Board, or any successor agency, denies the Company the right to impose, collect or remit a franchise fee
provided such denial is affirmed by the Supreme Court of Iowa, effective as of the date of the final agency order from which the appeal is taken.

12. The franchise fee shall be in lieu of any other payments to the City for the Company’s use of streets, alleys and public places in the said City and other administrative or regulatory costs with regard to said franchise; and said poles, lines, wires, conduits and other appliances for the distribution of electric current along, under and upon the streets, alleys and public places in the said City to supply individuals, corporations, communities, and municipalities both inside and outside of said City with electric light, heat and power shall be exempt from any special tax, assessment, license or rental charge during the entire term of this franchise.

13. The City shall not, pursuant to Chapter 480A.6 of the Code of Iowa, impose or charge right-of-way management fees upon the Company or fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting or inspections of Company work sites and projects or related matters.

111.10 TERM OF FRANCHISE. The term of the franchise granted by the ordinance codified by this chapter and the rights granted thereunder shall continue for the period of twenty-five (25) years from and after its acceptance by the said Company. †

111.11 ENTIRE AGREEMENT. This chapter sets forth and constitutes the entire agreement between the Company and the City with respect to the rights contained herein, and may not be supplemented, superseded, modified or otherwise amended without the approval and acceptance of the Company. Notwithstanding the foregoing, in no event shall the City enact any ordinance or place any limitations, either operationally or through the assessment of fees other than those approved and accepted by the Company within this chapter, that create additional burdens upon the Company, or which delay utility operations.

(Ch. 111 – Ord. 03-2014 – Nov. 14 Supp.)

† EDITOR’S NOTE: Ordinance No. 03-2014 adopting an electric franchise for the City was passed and adopted on July 12, 2014.
CHAPTER 112
TELEPHONE FRANCHISE

112.01 Franchise Granted

112.02 Police Power

112.01 FRANCHISE GRANTED. Northwestern Bell Telephone Company, a corporation (the “Company”), its successors and assigns are hereby granted the right to use and occupy the streets, alleys and other public places of the City for a term of twenty-five (25) years from the effective date of the ordinance codified by this chapter, for the purpose of constructing, maintaining and operating a general telephone system within the City.

112.02 POLICE POWER. The rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be conferred upon the City.

EDITOR’S NOTE
Ordinance No. 81-2 adopting a telephone franchise to Northwestern Bell Telephone Company was adopted by the Council on July 6, 1981. Voters approved the franchise at an election held October 6, 1981.
CHAPTER 113

CABLE TELEVISION FRANCHISE REGULATIONS

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113.01 DEFINITIONS. The following words and phrases, when used herein, shall, for the purposes of this chapter, have the meanings ascribed to them in this section:

1. “Basic cable” is the lowest priced tier of service that includes the retransmission of local broadcast television signals and any public, educational and governmental access channels.


3. “Cable operator” is as defined in the Cable Act.

4. “Cable service” is as defined in the Cable Act.

5. “Cable system” is as defined in the Cable Act.

6. “FCC” means Federal Communications Commission or successor governmental entity thereto.

7. “Franchise” means the initial authorization or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license,
resolution, contract, certificate, or otherwise, which authorizes construction and operation of the cable system.

8. “Grantee” means any person, firm, corporation or other entity granted a franchise hereunder, or the lawful successor, transferee or assignee thereof.

9. “Gross revenues” means any and all revenue received by the Grantee from the operation of the cable system to provide cable service to subscribers in the service area, provided, however, that such phrase does not include any fees or franchise fees or taxes which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

10. “Headend” means the land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a cable system.

11. “House drop” or “drop” means a cable that connects each building or home to the nearest feeder line of the cable network.

12. “Normal business hours” means those hours during which most similar businesses in the community are open to serve subscribers. In all cases, “normal business hours,” at a minimum, means those hours when the City Hall is open to serve citizens.

13. “Normal operating conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include (but are not limited to) natural disasters, strikes, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include (but are not limited to) special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the cable system.

14. “Outlet” means the point of connection of the cable or wire to a television.

15. “Person” means an individual, partnership, association, joint stock company, trust corporation or governmental entity.

16. “Private property” means all property, real, personal or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.

17. “Property of the Grantee” means all property, real, personal or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.

18. “Public access channel” means channel capacity designated for non-commercial public access use.

19. “Public property” means all property, real or personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

20. “Public way” means the surface of, and the space above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way
dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the service area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. “Public way” also means any easement now or hereafter held by the City within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and includes other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purpose of installing and operating the Grantee’s cable system over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the cable system.

21. “Service area” means the present municipal boundaries of the City.
22. “Service interruption” means the loss of video or audio on one or more channels.
23. “Service tier” means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.
24. “Subscriber” means a person who lawfully receives services of the cable system with the Grantee’s express permission.

113.02 FRANCHISE REQUIRED. Subject to Federal and State law, no person shall construct, install, maintain or operate within any public street in the City, or within any other public property of the City, any equipment or facilities for the distribution of television signals over a cable system to any subscriber, unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

113.03 GRANT OF FRANCHISE. The purpose of this chapter is to specify requirements for the establishment, construction, operation and maintenance of a cable system in the City pursuant to Chapter 364, Code of Iowa, and applicable Federal law. If a new applicant submits a proposal acceptable to the City, meets the requirements of this chapter, the requirements of the FCC and applicable State law, the City may then proceed to enter into a nonexclusive franchise agreement with such prospective Grantee, subject to the provisions of this chapter. If the incumbent operator submits a proposal acceptable under the terms of the Cable Act, and meets the requirements of the FCC, the City shall proceed to fulfill its obligations under Section 626 of the Telecommunications Act of 1996.

113.04 LENGTH OF FRANCHISE. The term of a franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be determined by the City in the Franchise Agreement.

113.05 SIGNIFICANCE OF FRANCHISE.

1. Franchise Nonexclusive. Any franchise granted hereunder by the City shall not be exclusive and the City reserves the right to grant a similar franchise to any qualified person at any time.
2. Privileges Must Be Specified. No privilege of exemption shall be inferred from the granting of any franchise, unless it is specifically prescribed.
3. Authority Granted. Any franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain in, upon,
along, above, over and under streets and public ways, as defined in Section 113.01 herein, which have been or may hereafter be dedicated and open to public use in the City, towers, antennas, poles, cables, electronic equipment, and other network appurtenances necessary for the operation of a cable system in the City, subject to the requirements of this chapter.

4. Subject to Other Regulatory Agencies’ Rules and Regulations. The Grantee shall at all times during the life of any franchise granted hereunder be subject to all generally applicable ordinances promulgated pursuant to the lawful exercise of the police power by the City.

5. Pole Use Agreements Required. Any franchise granted hereunder shall not relieve the Grantee of any obligation involved in obtaining pole or conduit-use agreements from the gas, electric and the telephone companies or others maintaining poles or conduits in the streets of the City.

6. Ordinance Revisions. Any franchises granted under this chapter are made subject to the lawful revisions of this chapter and this Code of Ordinances, provided that such revisions do not materially alter or impair the rights or the obligations of Grantee set forth in any Franchise Agreement and are mutually agreed to by the City and Grantees.

113.06 RIGHTS RESERVED TO THE CITY.

1. Right of Amendment Reserved to City. The City may from time to time add to, modify or delete provisions of this chapter as it shall deem necessary in the exercise of its lawful police powers and as may be mutually agreed to by the City and Grantee. Such additions or revisions shall be made only after a public hearing for which the Grantee shall have received written notice at least thirty (30) days prior to such hearing.

2. No Impairment of City’s Rights. Nothing herein shall be deemed or construed to impair or affect in any way to any extent any right of the City pursuant to Iowa law.

3. Grantee Agrees to City’s Rights. The City reserves every right and power which is required to be reserved or provided by an ordinance of the City, and the Grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or powers which have been or will be enacted or established subject to the provisions of subsection 1 of this section.

4. Police Powers of the City. Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver of any lawful governmental right or power of the City.

5. City Transfer of Functions. Any administrative right or power in or administrative duty imposed upon any elected official of the City shall be subject to transfer by the City to any other elected official, officer, employee, department or board.

6. City Right of Inspection. The City reserves the right, during the life of any franchise granted hereunder, to inspect and oversee all construction or installation work performed in the public right-of-way.
7. City Right of Network Installation. The City reserves the right during the life of any franchise granted hereunder to install and maintain for a reasonable charge upon or in the poles and conduits of the Grantee and pole fixtures necessary for municipal networks on the condition that such installation and maintenance thereof does not interfere with the operation of the Grantee. The Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement or other authorization relating to the service area and such use shall be non-commercial and may not be supplied for any municipal use directly competing with the Grantee.

113.07 APPLICATION FOR FRANCHISE. No initial franchise may be granted unless the applicant has successfully completed the application procedure in accordance with the following filing instructions promulgated by the City:

1. Filing Fee. Payment of a non-refundable filing fee to the City of one hundred dollars ($100.00), which sum shall be due and payable at the time with the submission of the application.

2. Content. All applicants must complete an application which shall include (but not be limited to) the following:
   A. Name and Address of Applicant. The name and business address of the applicant, date of application, and signature of applicant or appropriate corporate officer(s).
   B. Description of Proposed Operation. A general description of the applicant's proposed operation, including but not limited to business hours, operating staff, maintenance procedures beyond those required in the chapter, management and marketing staff policies and procedures, and, if available, the rules of operation for public access.
   C. Signal Carriage. A statement of the television and radio services to be provided, including both off-the-air and locally originated signals.
   D. Special Services. A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the Grantee for the public, governmental and educational channels required to be made available by the provisions of this chapter.
   E. Corporate Organization. A statement detailing the corporation organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
   F. Stockholders. A statement identifying the number of authorized outstanding shares of applicant’s stock including a current list of the names and current addresses of its shareholders holding five percent (5%) or more of the applicant’s outstanding stock.
   G. Inter-Company Relationships. A statement describing all inter-company relationships of the applicant, including parent, subsidiary or affiliated companies.
   H. Agreements and Understandings. A statement setting forth all agreements and understandings, whether written or oral, existing between the
applicant and any other person with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of proposal submittal.

I. Financial Statement. A copy of the financial statements for the two (2) previous fiscal years.

J. Financial Projection. A five-year operations pro forma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. Costs and revenues anticipated for voluntary services shall, if presented, be incorporated in the pro forma as required in this chapter, but shall be separately identified in the pro forma.

K. Financial Support. Suitable written evidence from a recognized financial institution addressing applicant’s financial ability and planned operation, and confirming that the financing institution is prepared to make the required funds available to applicant if it is awarded a franchise. If the planned operation is to be internally financed, a board resolution shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct, install and operate the cable television system contemplated hereunder.

L. Construction Timetable. A description of system construction including the timetable for provision and extension of service to different parts of the City.

M. Technical Description. A technical description of the type of system proposed by the applicant, including but not limited to system configuration (i.e., hub, dual cable), system capacity, two-way capability, etc.

N. Existing Franchises. A statement of existing franchises held by the applicant indicating when the franchises were issued and when the cable systems were constructed and the present state of the cable systems in each respective governmental unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.

O. Convictions. A statement as to whether the applicant or any of its officers or directors or holders of five percent (5%) or more of its voting stock has in the past ten (10) years been convicted of or has any charges pending for any crime other than a routine traffic offense and the disposition of each such case.

P. Operating Experience. A statement detailing the prior cable television experience of the applicant, including that of the applicant’s officers, management and staff to be associated, where known, with the proposed franchise.

Q. Supplementation to Applications. The City reserves the right to require such supplementary, additional or other information that the City deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the City.
R. Incorporation of Proposals. The Grantee, by the acceptance of any initial franchise awarded hereunder, agrees that the matters contained in the Grantee’s application for franchise, except as inconsistent with the FCC rules and regulations, law or ordinance, shall be incorporated into the franchise as though set out verbatim.

S. Forfeiture of Proposal Bond. Should the Grantee fail to comply with the requirements of this section, it shall acquire no rights, privileges or authority under this chapter whatever, and the amount of the proposal bond or certified check in lieu thereof, submitted with its application, shall be forfeited in full to the City as liquidated damages.

113.08 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.

1. Franchise Acceptance; Procedures. Any initial franchise awarded hereunder or franchise renewal and the rights, privileges and authority granted thereby shall take effect and be in force from and after the award thereof, provided that the Grantee shall file with the City the following:

   A. A statement by the Grantee of the unconditional acceptance of the franchise;
   B. A certificate of insurance as set forth in Section 113.51;
   C. Reimbursement to the City for the costs of publication of the franchise ordinance and the holding of the election connected therewith, if required by law.

2. Grantee to Have No Recourse. In accordance with Section 635A of the Cable Act, the Grantee shall have no monetary recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this chapter or its regulation. This shall not include negligent acts of the City, its agents or employees which are performed outside the regulatory or franchise awarding authority hereunder.

3. Acceptance of Power and Authority of City. The Grantee expressly acknowledges that in accepting any franchise awarded hereunder, it has relied upon its own investigation and understanding of the power and authority of the City to grant this franchise.

4. Inducements Not Offered. The Grantee, by acceptance of any franchise awarded hereunder, acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or in behalf of the City concerning any term or condition of this franchise that is not included in this chapter and Franchise Agreement.

5. Grantee Accepts Terms of Franchise. The Grantee acknowledges by the acceptance of the franchise and the terms herein that it has carefully read said terms and conditions and it is willing to and does accept all other obligations of such terms and conditions and further agrees that it will not claim that any provision of this chapter, or any franchise granted hereunder, is unreasonable or arbitrary.

113.09 GEOGRAPHICAL COVERAGE. The Grantee shall provide a cable system in such manner as to pass and provide adequate tap off facilities for every single family dwelling unit, multiple dwelling unit or other residential unit within the service area, subject to the provisions of the Franchise Agreement.
113.10 **CONDITIONS OF STREET OCCUPANCY.** All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways. A Grantee shall first obtain a permit from the City prior to commencing construction on the streets, alleys, public grounds or places and shall be on a form provided by the City. A Grantee shall not open or disturb the surface of any street, sidewalk, driveway or public place for any purpose without having first obtained a permit to do so in the manner provided by ordinance. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

113.11 **RESTORATION OF PUBLIC WAYS.** If during the course of the Grantee’s construction, operation, or maintenance of the cable system there occurs a disturbance of any public way by the Grantee, it shall, at its expense, replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance.

113.12 **RELOCATION AT REQUEST OF CITY.** Upon its receipt of reasonable advance notice, not to be less than ten (10) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way, any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City; however, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any person using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, the City shall provide notice to the Grantee of the City’s application for such funds and shall allow the Grantee to apply on its own behalf for such funds.

113.13 **SAFETY REQUIREMENTS.** Construction, installation, and maintenance of the system shall be performed in an orderly and worker-like manner. All such work shall be performed in substantial accordance with applicable FCC or other Federal, State and local regulations and the National Electric Safety Code. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

113.14 **UNDERGROUND AND OVERGROUND INSTALLATION REQUIREMENTS.**

1. **Pole Agreements.** The Grantee may lease, rent, or in any other manner by mutual agreement obtain the use of towers, poles, lines, cables, and other equipment and facilities from utility companies operating within the City, and use towers, poles, lines, cables, and other equipment and facilities for the system. When and where practicable, the poles used by the Grantee’s distribution system shall be those erected and maintained by such utility companies operating within the City, provided mutually satisfactory rental agreements can be reached. It is the City’s desire that all holders of public franchises in the City cooperate with the Grantee and allow the Grantee the use of their poles and pole line facilities whenever possible so that the number of new or additional poles installed in the City may be minimized.

2. **Grantee’s Poles.** The Grantee shall have the right to erect, install, and maintain its own towers, poles, guys, anchors, underground conduits, and manholes as may be necessary for the proper construction and maintenance of the antenna site, headend, and distribution system, providing that the Grantee has at the worksite the
necessary City permit or copy thereof, for scheduled work, obtained in advance from
the appropriate Department of the City.

3. Rent of Grantee’s Poles. A Grantee shall have the right to establish terms,
conditions, and specifications governing the form, type, size, quantity, and location of
equipment of others on its poles, and shall have the further right to charge a fair rental
for attachment space or spaces occupied by the said equipment and plant of others,
except that no rent shall be paid by the City for its attachment to the Grantee’s poles
and such use shall be non-commercial and may not be supplied for any municipal use
directly competing with the Grantee. The City shall pay any costs incurred by a
Grantee in providing space for a City’s attachments, including any necessary
rearrangements of a Grantee’s equipment and plant to provide room for City’s
attachments. Upon expiration, termination, or revocation of a franchise, or should a
Grantee wish to dispose of any of its poles, conduit or manholes being used by the
City, the City shall have the option to purchase them in place for their fair market
value.

4. Underground Facilities. In those areas of the City where transmission or
distribution facilities of both telephone and power companies are underground or
hereafter may be placed underground, the Grantee shall likewise construct, operate,
and maintain all of its transmission and distribution facilities underground to the
maximum extent the then existing technology permits, in accordance with the most
recent National Electrical Code, and its successor document, as well as in
conformance with all applicable State and municipal ordinances and codes. If and
when necessary, amplifiers and/or transformers in the Grantee’s transmission and
distribution lines shall be in appropriate housings on the surface of the ground. The
Grantee shall obtain a permit from the City for such underground construction of all
work required or pursuant to this section. Even when not required, underground
installation is preferable to the placing of additional poles.

5. Compliance with Codes. All transmission and distribution structures, lines,
and equipment erected by the Grantee in the City shall be located so as not to
endanger or interfere with the normal use of streets, alleys, or other public ways and
places so as to cause minimum interference with the rights or reasonable convenience
of the general public and adjoining property owners and so as not to interfere with
existing public utility installations and so as to comply with the most recent National
Electrical Code, as amended, as well as in conformance with all applicable State and
municipal ordinances and codes of general applicability. In the case of any
disturbance by the Grantee or its equipment of pavement, sidewalks, driveway, lawn,
or other surfacing the Grantee shall, at its expense and in the manner required by the
City, promptly replace and restore all such surfacing to a reasonably comparable
condition. The construction, installation, operation, maintenance and/or removal of
the cable communications system shall meet all of the following safety, construction,
and technical specifications and codes and standards:

- Occupational Safety and Health Administration Regulations (OSHA)
- National Electric Code
- National Electrical Safety Code (NESC)
- All Federal, State and Municipal Construction Requirements, including FCC
  Rules and Regulations
• All Building and Zoning Codes, as the same exist or may be amended hereafter

• City Standard Specifications

6. Interference with Other Utilities. The Grantee shall not place poles, conduits, or other fixtures above or below ground where the same shall interfere with any prior placement of gas, electric, telephone fixtures, water hydrant, or other utilities, and all such poles, conduits, or other fixtures above or below ground shall be so placed as to comply with all the lawful requirements of the City.

7. Moving Permits. The Grantee shall, on request of any persons holding a moving permit issued by the City, temporarily move its wires or fixtures to permit the moving of buildings. The expense of such temporary removal shall be paid in advance by the person requesting the same, and the Grantee shall be given not less than seven (7) business days’ advance notice to arrange for such temporary changes.

8. Authority to Trim Trees and Shrubbery. The Grantee shall have the authority under the supervision and direction of the City to trim trees or other natural growth overhanging any of its cable system in the street or alley right-of-way so as to prevent branches from coming in contact with the Grantee’s wires, cables, or other equipment. The Grantee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, in its sole discretion, and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the cable system undertaken by Grantee. Such replacement shall satisfy any and all obligations Grantee may have to the City pursuant to the terms of this section.

9. Service Area. The Grantee shall design and construct the cable system in such a manner as to pass by and provide adequate tap-off facilities for every single family dwelling, multiple family dwelling, apartment, school and government building located within the City limits, based upon the corporate boundaries at the time of the granting of the franchise, provided that such locations meet the density requirements pursuant to Section 113.15 – Extension of Service.

10. Underground Construction. Grantee shall participate in and use Iowa One Call and ensure that cable is buried pursuant to standards established by Iowa One Call or any state mandated successor agency.

11. Temporary Drops. Temporary drops shall be buried within two months of installation, except during the winter months which shall be defined as November 15 to April 1. In the event that the Grantee fails to bury any cable drops, within the two-month period, the Grantee shall provide basic and expanded basic cable service without charge to the affected cable subscriber from the last date that the drop was to have been buried to that actual date that it is buried.

12. Closing of Streets. The Grantee shall not be entitled to damages from the City sustained by the virtue of the closing, vacation, or relocation of any streets or alleys.

13. Private Easements. No cable, line, wire, amplifier, converter or other pieces of equipment owned by the Grantee shall be installed by the Grantee within private easements without first securing the written permission of the owner, lessee or tenant of the property involved, unless a private easement is determined to be available for use by the Grantee in accordance with applicable law.
113.15 EXTENSION OF SERVICE. Any franchise granted pursuant to this chapter shall require that a Grantee, at its expense, promptly extend its system to have service available to all potential subscribers of:

1. The corporate limits of the City of Garnavillo and newly annexed areas to the City, not then served by a cable system, where the average density is at least six (6) potential subscribers per lineal one-quarter mile of the proposed trunk and feeder cable route; and

2. Any new single family dwelling unit, commercial establishment, or potential subscriber within 300 feet of the existing distribution system in the City, upon request of the potential subscriber.

No customer shall be refused service arbitrarily. However, for unusual circumstances, such as: (i) existence of more than 300 feet of distance from the distribution cable to the connection point of service to the customers; or (ii) a density of less than six potential subscribers per 1320 feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and the customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per one-quarter mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals six (6) potential subscribers. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of the construction borne by such potential customers be paid in advance.

113.16 SERVICE TO PUBLIC BUILDINGS. Any Grantee shall upon request, provide without charge, one outlet of basic service and expanded basic service to those public buildings identified in the franchise agreement in accordance with the terms set forth in the franchise agreement.

113.17 CUSTOMER SERVICE STANDARDS – FCC MODEL. Any Grantee shall adhere to the FCC’s customer service standards. A copy of such standards effective as of the date of the passage of the ordinance codified in this chapter is on file at City Hall.

113.18 LOCAL PAYMENT CENTER. A Grantee shall establish a payment drop box center located at City Hall, which shall be open during normal business hours.

113.19 DEPOSITS. If required by Federal law, a Grantee shall bear interest at the minimum lending rate required by law on any subscriber deposit or a rate equal to that paid by the City for electric deposits.

113.20 SUBSCRIBERS’ ANTENNAS. A Grantee shall not require the removal of any potential or existing subscriber’s antenna as a condition of provision of service, except with the consent of the cable subscriber.

113.21 DISCONNECTION. There shall be no charge for a disconnection of cable service. If any subscriber fails to pay a fee or charge, a Grantee may disconnect the subscriber’s service. Such disconnection shall not be effected until the subscriber has been given ten days’ advance written notice of the intention to disconnect. After disconnection, upon payment of
any required delinquent fee or reconnection charge, the Grantee shall reinstate the subscriber’s service.

113.22 RECONNECTIONS. A Grantee shall restore service to customers wishing restoration of service, provided customer shall first satisfy any previous obligations owed.

113.23 DOWNGRADES. Subscribers shall have the right to have cable service disconnected or downgraded in accordance with FCC rules. The reduced billing for such service will be in accordance with the Grantee’s policies communicated with subscribers, but not in excess of seven (7) days, and such disconnection or downgrade shall be made as soon as practicable. A refund of unused service charges shall be paid to the customer within thirty (30) days from the date of termination of service.

113.24 TERMINATION OF SERVICE. Within 30 days of termination of service to any subscriber for any reason, a Grantee may, upon the subscriber’s written request, promptly remove all its aerial facilities and equipment from the subscriber’s premises, pursuant to FCC rules and regulations.

113.25 NOTIFICATION TO CITY OF SERVICE INTERRUPTIONS. A Grantee shall promptly notify the City, in writing, or, if appropriate, by oral communication, of any significant interruption in the operation of the system. For the purposes of this section, a “significant interruption in the operation of the system” means any interruption of audio or video on one or more channels for a duration of at least one hour to at least fifty percent (50%) of the subscribers, or an interruption of audio or video on at least one or more channels initiated by the Grantee of at least six hours to any single subscriber. The Grantee shall not be required to provide specific notice to the City of service interruptions in the case of a cable system upgrade.

113.26 SUBSCRIBER CREDIT FOR SERVICE INTERRUPTIONS. Upon service interruption of subscriber’s cable service, the following shall apply:

1. For service interruptions of over four hours and up to seven days, the Grantee shall provide, at the subscriber’s verbal or written request, a credit of one-thirtieth (1/30) of one month’s fees for affected services for each 24-hour period service is interrupted for four or more hours for all affected subscribers.

2. For interruptions of 15 days or more in one month, the Grantee shall provide, at the subscriber’s request, a full month’s credit for affected services for all affected subscribers.

113.27 SERVICE REPAIR STANDARDS. A Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled service interruptions, insofar as possible, shall occur during periods of minimum use of the cable system. A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all service interruptions, as required by this chapter.

113.28 REFUNDS TO SUBSCRIBERS.

1. If a Grantee fails to provide any material service requested by a subscriber in accordance with the current FCC standards, the Grantee shall, after adequate notification and being afforded the opportunity to provide the service, promptly
refund all deposits or advance charges paid for the service in question by the subscriber.

2. If any subscriber terminates for any other reason, a Grantee shall refund the unused portion of any prepaid subscriber service fee on a daily pro rata basis. The effective date used to pro rate such refunds shall be the date that the subscriber contacts the Grantee or a mutually agreed upon date consistent with communicated customer policies printed on the cable rate cards provided by the Grantee.

3. Any disputes arising under this section shall be resolved in accordance with Section 113.46 of this chapter.

113.29 CHANNEL CARD. The Grantee shall distribute to all subscribers via direct mail or bill stuffers no less than annually an accurate and up-to-date channel card listing the cable channels and services available over the cable system. A revised channel card shall be distributed via a newspaper of record within thirty (30) days after a change or addition in channels or services offered affecting two (2) or fewer channels. Whenever changes in channels or services have affected three or more channels since the last channel card distributed via direct mail or bill stuffers, then a new channel card shall be distributed to every subscriber within thirty (30) days via direct mail or bill stuffers.

113.30 CUSTOMER HANDBOOK. A Grantee shall provide written customer policies or a handbook to all new subscribers, and thereafter, upon request. Grantee’s written customer policies or handbook shall, at a minimum, comply with all notice requirements in this chapter and those promulgated by the FCC. If Grantee’s operating rules are changed, subscribers shall be notified in a timely manner.

113.31 SUBSCRIBER PRIVACY. A Grantee shall abide by current Federal law and FCC regulations and Section 631 of the Cable Act regarding protection of subscriber privacy.

113.32 DISCRIMINATORY OR PREFERENTIAL PRACTICES. A Grantee shall not, in making available the services or facilities of its cable system, or in its rules or regulations, or in any other manner, make or grant preferences or advantages to any subscriber or potential subscriber, or to any user or potential user, and shall not subject any person to any prejudice or disadvantage, based on their race, color, national origin or gender. This provision shall not prohibit promotional campaigns to stimulate subscriptions to the cable system or other legitimate uses thereof, nor the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification shall be entitled.

113.33 IDENTIFICATION OF EMPLOYEES. Every field service and installation employee of the Grantee shall be clearly identified by an identification card, badge or uniform shirt. All employees of Grantee shall display proper identification upon request of a subscriber, provided that the City requires all utilities operating in the City to do the same. Every field service and installation vehicle of the Grantee shall be clearly marked by logo or decals.

113.34 SYSTEM DESIGN AND EQUIPMENT REQUIREMENTS.

1. Switching Device. A Grantee, upon request from any subscriber, shall install at a reasonable charge a switching device to permit a subscriber to continue to utilize the subscriber’s television antenna. The Grantee shall not require the removal, or offer to remove, any subscriber’s antenna lead-in wire.
2. Parental Control Devices. Upon request, and within 120 days, Grantee shall provide at a reasonable charge to subscribers, parental control devices that allow any channel or channels to be locked out. Such devices shall block both the video and the audio portion of such channels to the extent that both are unintelligible. The lockout device described herein shall be made available to all subscribers requesting it beginning on the first day that any cable service is provided.

3. Public, Educational and Governmental Channels. The Grantee shall provide specially dedicated, non-commercial education and government channel capacity, as specified in the franchise agreement, to be made available to the public, groups, and individuals on a first-come, non-discriminatory basis. Such channels shall be operated in accord with FCC rules and regulations. The Grantee shall make no charge for use of such channel. The City or its designee shall exercise sole control over the operation and shall establish rules providing for access to the education and government channel.

4. Access Equipment and Facilities Fee. If authorized by the City, and after sixty (60) days’ notice from the City to a Grantee, a Grantee shall provide ongoing support for public, educational, and governmental access equipment and facilities in the amount of not to exceed one dollar ($1.00) per subscriber per month for the entire term of the franchise, payable in the same manner as the franchise fee payment pursuant to Section 113.35 hereof. The City acknowledges that this amount shall not be considered gross revenues subject to the payment of franchise fees pursuant to Section 113.35 hereof. Furthermore, payments of this ongoing support shall not be deemed to be “franchise fees” within the meaning of Section 622 of the Cable Act and such payment shall not be deemed to be “payments-in-kind” or any involuntary payments chargeable against the compensation to be paid to the City by a Grantee pursuant to Section 113.35 hereof. A Grantee shall be allowed to collect such fee as a pass through to cable subscribers. This fee shall be revised on an annual basis in accordance with the Consumer Price Index.

5. Leased Access Channels. Any Grantee shall make a portion of the remaining unused channels available for lease as required by Section 612 of the Cable Act.

6. Interference. The Grantee’s cable system shall be designed, engineered, and maintained so as not to interfere with the television and radio reception of residents of the City who are not subscribers on the cable system.

7. Additional Services. The Grantee is encouraged to make available such additional video, audio, radio, digital, point-to-point service, and other services as are requested by subscribers and programmers who are willing to pay for such services, provided that such services are technologically and economically feasible. If no applicable rate exists when such a service is requested, the rate change procedures established in Section 113.36 shall be followed.

8. Technical Standards. The cable system shall be operated and maintained in compliance with FCC Rules and Regulations Technical Standards K of Part 76 of Chapter 1 of Title 47 of the Code of Federal Regulations, as revised or amended from time to time and on file at City Hall. FCC proof of performance test results shall be delivered to the City annually or upon written request of the City. Grantee shall file a copy of test results performed by the FCC or other governmental regulatory agencies on the cable system with the City.
9. Filing of Maps. Upon request of the City, the Grantee shall file with the City strand maps, showing the location of all property and facilities of the Grantee within the City. All maps supplied by the Grantee shall be considered confidential and proprietary.

113.35 FRANCHISE FEE.

1. Franchise Fee Payment. In consideration for the use of the streets and public ways of the City for the construction, operation, maintenance, and reconstruction of a cable system within the City, the Grantee shall pay to the City an annual amount equal to three percent (3%) of the Grantee’s gross revenues as defined in Section 113.01 of this chapter.

2. Quarterly Payments. Payment due to the City under the franchise agreement shall be made quarterly at the City Clerk’s office not later than forty-five (45) days following March 31, June 30, September 30 and December 31 of each year. Any fee not paid when due shall bear interest at a rate of one and one-half percent (1½%) per month from the date due. Each payment shall be accompanied with a detailed report, the form of which is on file at City Hall, showing the basis for the computation, and shall include (but not be limited to) a specific breakdown of the following items: basic tier service charges, expanded basic service charges, installation charges, reconnection fees, premium channel revenues, revenue from other sources such as contracted or subleased cable services, pay per view, miscellaneous revenue, and such other relevant facts, as may be required by the City, necessary to determine the accuracy of the franchise payment as specified in of this chapter. The acceptance of any payment shall not be construed as an accord that the amount paid is, in fact, the correct amount; nor shall such acceptance of payment be construed as a release of any claim the City may have for additional sums payable by the Grantee. All amounts paid shall be subject to audit and recomputation by the City. The Grantee shall permit the City, upon request with reasonable notice, to review at Grantee’s local office its gross revenue records as may be necessary to monitor compliance with Section 113.35 of this chapter.

3. Franchise Fee Audit. A Grantee will fully cooperate with a franchise fee audit performed by a professional firm that is chosen by the City. The costs associated with the audit will be paid for by the City, except that the Grantee shall pay for the costs if the audit shows an underpayment of franchise fees in excess of five percent (5%) or more for a reporting period.

4. Franchise Fee Increases. The City may request an increase in franchise fees at any time during the term of the franchise, equal to the maximum percentage allowed by Federal law. However, such request shall be made in writing and the Grantee will not be liable for said increase until proper notice, as defined by Federal law, is given to its subscriber. Prior to making a final decision regarding an increase in franchise fees, the City shall conduct a public hearing and shall grant an opportunity to the Grantee to discuss the proposed increase in franchise fee.

5. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five years from the date on which payment by a Grantee is due.
113.36 **RATES AND CHARGES.** The City may regulate rates for the provision of basic cable and equipment as permitted by the Cable Act. Any rate adjustments shall be filed with the City Clerk not later than 30 days prior to the implementation of the adjustment.

113.37 **FRANCHISE RENEWAL.** Any proceedings undertaken by the City that relate to the renewal of a Grantee’s franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of Federal or State law.

113.38 **CONDITIONS OF SALE.** If a renewal or extension of a Grantee’s franchise is denied or the franchise is lawfully terminated, and the City either lawfully acquires ownership of the cable system or by its actions lawfully effects a transfer of ownership of the cable system to another person, any such acquisition or transfer shall be at a price determined pursuant to the provisions set forth in Section 627 of the Cable Act. In the case of a final determination of a lawful revocation of the franchise, at the Grantee’s request, which shall be made in its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its system to a qualified third party. During such a period of time the City shall authorize the Grantee to continue to operate pursuant to the terms of its prior franchise. However, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its system which is reasonably acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to Federal or State law. The Grantee may continue to operate its system during the six-month period and it shall not be deemed to be a waiver or extinguishments of any right of either the City or the Grantee.

113.39 **TRANSFER OF FRANCHISE.**

1. **Transfer of Franchise.** Any franchise granted under this chapter shall be a privilege to be held for the benefit of the public. Any franchise so granted cannot, in any event, be sold, transferred, leased, assigned or disposed of, including, but not limited to, by forced or voluntary sale, except to an entity controlling, controlled by or under common control with the Grantee, without the prior written consent of the City. Such consent shall be given or denied no later than one hundred twenty (120) days following any request and shall not be unreasonably withheld. Prior consent shall not be required when transferring the franchise between wholly owned subsidiaries of the same entity. Nor shall such consent be required for a transfer in trust, by mortgage, by other hypothecation, or assignment of any rights, title, or interest of the Grantee in the cable system in order to secure indebtedness.

2. **Ownership or Control.** In the event that the Grantee sells or otherwise transfers ownership in the cable system, such sale or transfer shall conform to Section 617 of the Cable Act. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the City may in accordance with Section 617 inquire into the qualifications of the prospective controlling party, and the Grantee shall assist the City in any such inquiry. In seeking the City’s consent to any change in ownership or control, the transferee shall have the responsibility:

   A. To show to the satisfaction of the City whether the proposed purchaser, transferee, or assignee (the “proposed transferee), which in the case
of a corporation shall include all directors and all persons having a legal or equitable interest of fifty percent (50%) or more of the voting stock:

- Has ever been convicted or held liable for acts involving moral turpitude including, but not limited to, any violation of Federal, State or local law or regulations, or is presently under an indictment, investigation or complaint charging such acts;
- Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him, or them by any court of competent jurisdiction; or
- Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a cable system.

The City retains the right to withhold approval of the transfer until the transferee has provided the information required in this subsection.

B. To establish the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee and such other data to determine the legal, financial, and technical qualification of the transferee.

C. To establish that the technical capability of the proposed transferee is such as shall enable it to maintain and operate the cable system for the remaining term of the franchise under the existing franchise terms.

3. Any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the City that the financial institution, or its designee, as approved in writing by the City, shall take control and operate the cable system in the event of a Grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the cable system for a period exceeding one (1) year, unless extended by the City at its discretion, but during said period of time the City shall have the right to petition the City to transfer the franchise to another Grantee. Except insofar as the enforceability of this subsection may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors rights generally, and further subject to applicable Federal, State or local law, if the City finds that such transfer, after considering the legal, financial, character, technical and other public interest qualities of the proposed transferee, is satisfactory, the City shall transfer and assign the right and obligations of such franchise as in the public interest.

4. The consent or approval of the City to any transfer by the Grantee shall not constitute a waiver or release of the rights of the City in and to the streets, and any transfer shall by its terms, be expressly subject to the terms and conditions of any franchise.

5. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory of the City.

6. The City may approve the transfer or deny the transfer pursuant to Section 617 of the Cable Act.
7. When the City approves a transfer under this section, the new Grantee shall indicate acceptance of the franchise as specified in Section 113.08, including the filing of all necessary bonds, funds, proofs of insurance and certifications.

8. The restrictions of this section shall be effective immediately upon execution of a franchise agreement.

113.40 **RIGHT OF INSPECTION OF CONSTRUCTION.** The City shall have the right to visually inspect all construction or installation work performed subject to the provisions of this chapter and to make such visual inspections as it shall find necessary to ensure compliance with the terms of this chapter and other pertinent provision of law.

113.41 **NEW DEVELOPMENTS.** The Grantee is encouraged to upgrade its facilities, equipment and service so that its cable system is as advanced as the current state of production technology will allow. New developments shall be a topic of discussion at all review sessions and shall be a factor to be considered in connection with requests for rate adjustments, pursuant to FCC rules and regulations.

113.42 **TESTING FOR COMPLIANCE.** The Grantee shall meet or exceed all FCC minimum performance and technical standards. The City shall have the right to compel the Grantee to provide results of Grantee’s testing of the cable system. In the event that the City has evidence of non-compliance, the City may also perform technical tests of the cable system during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the cable system in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable State or Federal laws. Such tests may be undertaken only after giving the Grantee reasonable notice thereof, not to be less than ten business days, and providing a representative of the Grantee has an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that the Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the City. Except in emergency circumstances, the City agrees that such testing shall be undertaken no more than once a year, and that the results thereof shall be made available to the Grantee. Any such special performance tests or measurements required by the City shall be reported to the City within fourteen (14) business days after such test or measurements are performed. Such report shall include the following information: the nature of the complaint which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in said testing; the results of such tests; and the method in which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

113.43 **BOOKS AND RECORDS.** The City or its certified public accountant upon reasonable notice to the Grantee may review such of its books and records at the Grantee’s business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature under State and Federal rules of evidence. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to
enforce the provisions hereof. The Grantee shall not be required to provide subscriber information in violation of Section 631 of the Cable Act.

113.44 COMMUNICATIONS WITH REGULATORY AGENCIES. Copies of all petitions, applications, communications, reports, and all other documents pertaining to the cable system and franchise submitted by the Grantee or its parent companies to the FCC, Securities Exchange Commission, or any other Federal or State regulatory commission or agency shall be made available to the City upon written request to the Grantee.

113.45 COMPLAINT RECORDS. A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all service interruptions or complaints regarding system service problems. The Grantee shall maintain detailed logs setting forth the date and substance of each service interruption or complaint regarding the system service problems received by phone, mail or other means during the preceding calendar month, and the date and nature of action taken by the Grantee to respond to such complaints, or, if still pending, the status thereof. Such logs shall be available to the City for review for two years thereafter. A “complaint” as used herein shall be a written complaint from a subscriber regarding signal quality or service, but not regarding programming or rates which, in the case of oral complaints is not resolved within the original telephone call or visit from the subscriber.

113.46 CITY ROLE IN COMPLAINTS. Unresolved complaints concerning the system or its operation or maintenance may be directed to the City Clerk. The procedure to handle complaints shall be as follows:

1. Within 30 days from the occurrence of the facts and circumstances giving rise to a complaint or grievance, the complainant shall state the complaint or grievance to the Grantee in writing. In the event such a complaint or grievance is received by the City, the same shall be forwarded to Grantee in writing.

2. Within five (5) business days from the receipt by the Grantee of a complaint from the City, the Grantee shall state to complainant its intentions with respect to the complaint in writing.

3. Unresolved complaints concerning the system or its operation or maintenance shall be directed to the City. The City shall promptly forward the complaint to the Grantee or shall take the question up by correspondence with the Grantee. Within such time as may be reasonably prescribed by the City, the Grantee shall resolve the complaint or advise the City of its refusal or inability to do so. When the Grantee resolves the complaint, it shall so notify the City. If a complaint has not been resolved, the City may take any appropriate action authorized by this chapter.

4. All subscribers shall be notified by the Grantee of the City’s role as the regulatory authority on the monthly cable bills.

5. Nothing herein shall limit or alter the requirement or requirements contained in this chapter for customer service standards on file in City Hall.

6. The City shall be notified of action taken to resolve grievances or complaints, if the complaint was referred by the City under this section.

113.47 PERFORMANCE TESTING. Grantee shall perform all cable system tests and maintenance procedures as required by the FCC and this chapter.
CHAPTER 113  CABLE TELEVISION FRANCHISE REGULATIONS

113.48 REVIEW SESSIONS.

1. Purpose of Review Sessions. In recognition of the fact that a great many technical, financial, marketing and legal uncertainties are associated with all aspects of cable communications at the present time, it is the intent of the City to provide for a maximum feasible degree of flexibility in a franchise throughout its term to achieve an advanced and modern cable system for the City. The principal means for accomplishing this flexibility will be the scheduled review sessions provided for in this chapter. It is intended that such review sessions will serve as a means of cooperatively working out solutions to problems that develop. Furthermore, such review sessions shall be two-way processes. For example, if either party has perceived that some major problem has developed, the session shall be devoted primarily to working out solutions acceptable to both parties.

2. Topics to be Covered. The City and the Grantee shall hold scheduled review sessions on the third, sixth, and ninth anniversary dates of the effective date of the franchise agreement. All such review sessions shall be open to the public and notice thereof shall be published once, not less than four (4) days or more than twenty (20) days before each review session, as provided by law. The published notice shall specify the topics to be discussed. The review sessions may be canceled by mutual agreement of the City and Grantee. The following topics may be discussed at every scheduled review session:

- Recent and developing judicial and federal communications rulings service rate structures
- Free and discounted services
- Application of new technology or new developments cable system performance
- Cable system extension policy
- Services provided
- Programming offered
- Customer complaints review
- Community development and education interconnection
- New services
- Subscriber privacy abuse issues new developments
- Franchise fees

Other topics, in addition to those listed, may be added by either party. Members of the general public may also request additional topics.

113.49 REGULATORY RESPONSIBILITY. The City, acting alone or acting jointly with other franchising authorities, may exercise or delegate the following responsibilities:

1. Administering the provision of a cable system franchise,

2. Coordinating the operation of a local access channel and facilities,

3. Providing technical, programming and operational support to public agency users, such as government departments, schools and health care institutions.
4. Establishing jointly with a Grantee, or as otherwise specified in the franchise agreement, procedures and standards for use of channels dedicated to public use and the sharing of public facilities, if provided for in any franchise agreement,

5. Planning the expansion and growth of public benefit cable services,

6. Analyzing the possibility of integrating cable systems with other local, regional or national telecommunications networks,

7. Formulating and recommending long-range telecommunications policy.

113.50 ANNUAL REPORT. No later than ninety (90) days after the close of a Grantee’s fiscal year, and upon written request, the Grantee shall submit a detailed written informative report to the City, including the following information:

1. A summary of the previous year’s activities in development of the cable system, including, but not limited to, services begun or dropped and newly served geographic areas within the City limits.

2. A summary of complaints, identifying the number and specific nature of complaints and their disposition.

3. A list of key management for the Garnavillo franchise along with their addresses and job titles.

4. The annual report of the parent company, if a public corporation. Such report shall be construed to mean the report of the previous year.

5. The total estimated annual value of the potential revenue from cable services provided in the service area without charge or provided under a barter arrangement, along with the total estimated number of persons who are provided cable services in the service area without charge or under a barter agreement.

113.51 INSURANCE AND INDEMNIFICATION.

1. Indemnification. Any Grantee shall defend, indemnify, protect, and hold harmless the City from and against any and all liability, losses, and damage to property or bodily injury or death to any person, including payments made under workmen’s compensation laws, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance, or operation of Grantee’s cable system and caused by any act or failure to act on the part of the Grantee, its agents, officers, servants, or employees. The City shall give the Grantee written notice of its obligation to indemnify, within 30 days following service of a petition or other similar pleading. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

2. Insurance Coverage and Notifications. A Grantee shall maintain insurance in such amounts and kinds of coverage as may be specified by the City in the franchise agreement. Such coverage may be reasonably adjusted by the City with ninety-day notification, provided that the City demonstrates the need for increases in coverage. The Grantee shall maintain such insurance with insurance underwriters authorized to do business in the State of Iowa. All policies shall name the City, its employees, servants, agents, and officers as additional insured parties. Each policy shall provide that it may not be canceled nor the amount of coverage altered until thirty (30) days after receipt by the City Clerk of a registered mail notice of such intent to cancel or alter coverage. The Grantee shall provide a certificate of insurance designating the
City as an “additional insured.” The Grantee shall maintain and provide to the City proof of public liability insurance for not less than the amounts specified in the franchise agreement.

3. Insurance for Contractors and Subcontractors. Any Grantee shall provide coverage for any contractor or subcontractor involved in the construction, installation, maintenance or operation of its cable system by either obtaining the necessary endorsements to its insurance policies or requiring such contractor or subcontractor to obtain appropriate insurance coverage consistent with this section and appropriate to the extent of its involvement in the construction, installation, maintenance or operation of the Grantee’s cable system.

113.52 FORECLOSURE. A foreclosure or other judicial sale of all or part of the system shall be treated as a change in control of the Grantee and the provision of Section 113.57(7) of this chapter shall apply.

113.53 RECEIVERSHIP. The City shall have the right to cancel this franchise 120 days after the appointment of a receiver or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceedings, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or less:

1. Within 120 days after being elected or appointed, such receiver or trustee shall have fully complied with all provisions of this chapter and remedied all defaults thereunder; and

2. Shall have executed an agreement, approved by the court having jurisdiction, whereby such receiver or trustee agrees to be bound by this chapter and the franchise granted to the Grantee.

113.54 CONTINUITY OF SERVICE.

1. Right to Continuous Service. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the cable system, or the City gives notice in accordance with the franchise or this chapter of intent to terminate or fails to renew this franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service for six months. In the event of a change of Grantee, or in the event a new operator acquires the cable system, the original Grantee shall cooperate with the City, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenue for any period during which it operates the cable system, and shall be entitled to reasonable costs for its services when it no longer operates the cable system.

2. Right of City to Operate Cable System. In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval of the City or without just cause, the City may, working in conjunction with any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the franchise, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Grantee, then during such period as the City fulfills such obligation, the City shall be entitled to a reasonable management fee.
113.55 FRANCHISE PROCESSING COSTS.

1. Initial Franchises. For an initial franchise awarded, the costs to be borne by the Grantee shall include (but shall not be limited to) all costs of publication of notices prior to any public meeting, publication of relevant ordinances and franchise agreements, incurred by the City.

2. Franchise Renewal. For a franchise renewal, the Grantee shall reimburse the City the cost of publication of notices, publication of relevant ordinances, and publication of franchise agreements.

3. Franchise Transfer. For a franchise transfer, the transferee shall reimburse the City the cost of publication of notices, publication of relevant ordinances and publication of franchise agreements. The City reserves the right to withhold approval of such transfer until all costs have been reimbursed by the transferee.

4. Other Costs. The publication costs provided for in this section shall be in addition to any other inspection or permit fee or other fees due to City under any other ordinance of general applicability.

113.56 TAXES. Subject to Federal and State law, the Grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees and other generally applicable charges of a like nature which may be taxed, charged, assessed, levied, or imposed upon the property of the Grantee and upon any services rendered by the Grantee.

113.57 ENFORCEMENT AND TERMINATION OF FRANCHISE.

1. Notice of Violation. In the event that the City believes that the Grantee has not complied with the terms of the franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

2. Grantee’s Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 1: (a) to respond to the City, contesting the assertion of noncompliance, or (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

3. Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 1 pursuant to the procedures set forth in subsection 2, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to subsection 2 above, the City shall schedule a public hearing to investigate the default. The City shall notify the Grantee in writing of the time and place of such meeting no less than five business days in advance and provide the Grantee with an opportunity to be heard.

4. Enforcement. Subject to applicable Federal and State law, in the event the City, after such public hearing, determines that the Grantee is in default of any provision of the franchise, the City may:

   A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;

   B. Commence an action at law for monetary damages or seek other equitable relief; or
C. In the case of a substantial default of a material provision of the franchise, declare the franchise agreement to be revoked in accordance with the procedures outlined in this section.

The City shall give written notice to the Grantee of its intent to revoke the franchise on the basis of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response satisfactory from the Grantee, it may then seek termination of the franchise at a public meeting. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination. At the designated meeting, the City shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City de novo and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City’s rights under the franchise in lieu of revocation of the franchise.

5. Prompt Compliance. The Grantee shall not be relieved of its obligation to comply with this chapter by reason of the City’s failure to enforce prompt compliance.

6. Impossibility of Performance. A Grantee shall not be held in default or noncompliance with the provisions of the franchise, or suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by the following circumstances if reasonably beyond its control:

   A. Necessary utility rearrangements, pole change-outs or obtainment of easement rights,
   B. Governmental or regulatory restrictions,
   C. Lockouts,
   D. War,
   E. National emergencies,
   F. Fire,
   H. Strikes

7. Termination of Franchise.

   A. Grounds for Revocation. The City reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:

      (1) If the Grantee should default in the performance of any of its material obligations under this chapter or the franchise and fails to cure the default within sixty (60) days after receipt of written notice
of the default from the City, or such longer time as specified by the City.

(2) If a petition is filed by or against the Grantee under the Bankruptcy Act or any other insolvency or creditors’ rights law, State or Federal, and the Grantee shall fail to have it dismissed.

(3) If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of the Grantee’s assets.

(4) If the Grantee makes an assignment for the benefit of creditors.

(5) If the Grantee violates any order or ruling of any State or Federal regulatory body having jurisdiction over the Grantee, unless the Grantee or any party similarly affected is lawfully contesting the legality or applicability of such order or ruling and has received a stay from a Court of appropriate jurisdiction.

(6) If the Grantee evades any of the provisions of this chapter or the franchise agreement.

(7) If the Grantee practices any intentional fraud or deceit upon the City or cable subscribers.

(8) If the Grantee materially misrepresents facts in the application for a franchise.

(9) If the Grantee ceases to provide services over the cable system for seven consecutive days for any reason within the control of the Grantee.

B. Restoration of Property. In removing its plant, structures and equipment, the Grantee shall refill at its own expense any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee’s removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance indemnity provided in Section 113.51 and the performance bond in Section 113.59 shall continue in full force and effect during the period of removal.

C. Reimbursement of Costs. Pursuant to subsections 1 and 2 of this section, in the event of a failure by the Grantee to complete any work as required above or any work required by law or ordinance within the time established and to the reasonable satisfaction of the City, after due notice and opportunity to cure, the City may cause such work to be done and the Grantee shall reimburse the City the costs thereof within thirty (30) days after receipt of an itemized list of such costs or the City may recover such costs as provided in Section 113.58.

113.58 SECURITY FUND.

1. Within ten (10) days after execution of the franchise agreement, the Grantee shall deposit with the City Clerk, and maintain on deposit through the term of the franchise, the sum of $10,000.00 as security for the faithful performance by it of all
the provisions of the franchise and compliance with all orders, permits, and directions of any agency of the City having jurisdiction over its acts or defaults under the franchise, and the payment by the Grantee of any claims, liens, and taxes due the City which arise by reason of the construction, operation, or maintenance of the system.

2. Within ten (10) days after notice that any amount has been withdrawn from the security fund deposited pursuant to subsection 1 of this section, the Grantee shall pay to, or deposit with, the City Clerk a sum of money sufficient to restore such security fund to the original amount of $10,000.00.

3. If the Grantee fails to pay to the City any compensation within the time fixed herein; or fails after ten (10) days’ notice to pay to the City any taxes due and unpaid; or fails to repay to the City within such 10 days, any damages, costs, or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with the franchise; or fails after three (3) days’ notice of such failure by the City to comply with any provision of the franchise which the City reasonably determines can be remedied by an expenditure of the security, the City Clerk may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the City Clerk shall notify the company of the amount and date thereof.

4. The security fund deposited pursuant to this section shall become the property of the City in the event that the franchise is canceled by reason of the default of the Grantee. The Grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the Grantee. Interest earned by the investment of the security fund will accrue to the Grantee.

5. The rights reserved to the City with respect to the security fund are in addition to all other rights of the City, whether reserved by the franchise or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right the City may have.

113.59 FAITHFUL PERFORMANCE BOND. Upon acceptance of a franchise, the Grantee shall submit and maintain throughout the term of the franchise, a faithful performance bond in the amount of one hundred thousand dollars ($100,000.00). The bond shall insure compliance with all applicable laws, regulations, ordinances and provisions of this permit, shall provide for recoverable loss or damages, compensation, indemnification, reasonable attorney fees, cost of removal or abandonment of Grantee’s property, and shall cover penalties of one hundred dollars ($100.00) per day for failure to meet the construction requirements of any franchise agreement.

113.60 VIOLATIONS AND PENALTIES. If the Grantee fails to comply with the requirements of this cable franchise regulatory ordinance, and a cable franchise agreement, then the City may invoke and secure compliance in accordance with Chapter 3 of this Code of Ordinances and as authorized by Section 364.22 of the Code of Iowa.

113.61 ACTIONS OF PARTIES. In any action by the City or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
113.62 EQUAL PROTECTION. In the event the City enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the City’s streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

113.63 NOTICES. Unless expressly otherwise agreed between the parties, every notice or response required by a franchise to be served upon the City or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid or express mail service.

113.64 WAIVER OR EXEMPTION. The City reserves the right to waive provisions of this chapter or exempt all Grantees from meeting provisions of this chapter, if the City determines such waiver or exemption is in the public interest.

(Ch. 113 – Ord. 14-2012 – Nov. 14 Supp.)
CHAPTER 114

CABLE TELEVISION FRANCHISE

114.01 Definitions. The following words and phrases, when used herein, shall, for the
purposes of this chapter, have the meanings ascribed to them in this section:

1. “Basic cable” is the lowest priced tier of service that includes the retransmission of local broadcast television signals and any public, educational and governmental access channels.


3. “Cable operator” is as defined in the Cable Act.

4. “Cable service” is as defined in the Cable Act.

5. “Cable system” is as defined in the Cable Act.

6. “FCC” means Federal Communications Commission or successor governmental entity thereto.

7. “Franchise” means the initial authorization or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the cable system.

8. “Grantee” means Mediacom Iowa LLC, or the lawful successor, transferee or assignee thereof.

9. “Gross revenues” means any and all revenue received by the Grantee from the operation of the cable system to provide cable service to subscribers in the service area, provided, however, that such phrase does not include any fees or franchise fees or taxes which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

10. “Headend” means the land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a cable system.

11. “House drop” or “drop” means a cable that connects each building or home to the nearest feeder line of the cable network.
12. “Normal business hours” means those hours during which most similar businesses in the community are open to serve subscribers. In all cases, “normal business hours,” at a minimum, means those hours when the City Hall is open to serve citizens.

13. “Normal operating conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include (but are not limited to) natural disasters, strikes, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include (but are not limited to) special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the cable system.

14. “Outlet” means the point of connection of the cable or wire to a television.

15. “Person” means an individual, partnership, association, joint stock company, trust corporation or governmental entity.

16. “Private property” means all property, real, personal or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.

17. “Property of the Grantee” means all property, real, personal or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.

18. “Public access channel” means channel capacity designated for non-commercial public access use.

19. “Public property” means all property, real or personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

20. “Public way” means the surface of, and the space above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the service area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. “Public way” also means any easement now or hereafter held by the City within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and includes other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purpose of installing and operating the Grantee’s cable system over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the cable system.

21. “Service area” means the present municipal boundaries of the City.

22. “Service interruption” means the loss of video or audio on one or more channels.

23. “Service tier” means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.
114.02 TERM OF FRANCHISE. Mediacom LLC, its successors and assignees are hereby granted a renewal of their nonexclusive right, franchise and authority for a period of ten (10) years† to erect, maintain, and operate a cable system in the City, and to sell and supply individuals, firms and corporations within the corporate limits of the City, cable service and other services in, along, among, upon, across, above, over, under, or in any manner connected with public ways within the service areas and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across, or along any public way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system, subject to the conditions and restrictions provided and subject to the Cable Franchise Regulatory Ordinance, and all applicable law of the State of Iowa and United States of America.

114.03 COMPLIANCE TO CABLE FRANCHISE REGULATORY ORDINANCE. The Grantee shall comply with all of the conditions and provisions of the Cable Franchise Regulatory Ordinance (Chapter 113 of this Code of Ordinances), unless an exemption or modification is so specified in this chapter. In the event of a conflict or ambiguity between this chapter and such regulatory ordinance, the terms of this chapter shall control. No future transferees or assigns of the franchise shall be exempt from the following sections of the Cable Franchise Regulatory Ordinance: 113.07 [Application for Franchise]; 113.34(4) [Access and Equipment and Facilities Fee]; and 113.58 [Security Fund].

114.04 FRANCHISE FEE.

1. Franchise Fee Payment. In consideration for the use of the streets and public ways of the City for the construction, operation, maintenance, and reconstruction of a cable system within the City, the Grantee shall pay to the City an annual amount equal to three percent (3%) of the Grantee’s gross revenues as defined in Section 114.01 of this chapter.

2. Quarterly Payments. Payment due to the City under this chapter shall be made quarterly at the City Clerk’s office not later than forty-five (45) days following March 31, June 30, September 30 and December 31 of each year. Any fee not paid when due shall bear interest at a rate of one and one-half percent (1½%) per month from the date due. Each payment shall be accompanied with a detailed report, on file in City Hall, showing the basis for the computation, and shall include (but not be limited to) a specific breakdown of the following items: basic tier service charges; expanded basic service charges; installation charges; reconnection fees; premium channel revenues; shopping service revenue; revenue from other sources such as contracted or subleased cable services; pay-per-view; miscellaneous revenue, and such other relevant facts, as may be required by the City, necessary to determine the accuracy of the franchise payment as specified in of this chapter. The acceptance of any payment shall not be construed as an accord that the amount paid is, in fact, the correct amount; nor shall such acceptance of payment be construed as a release of any claim the City may have for additional sums payable by the Grantee. All amounts paid shall be subject to audit and recomputation by the City. The Grantee shall permit

† EDITOR’S NOTE: Ordinance No. 15-2012 adopting a cable television franchise for the City was passed and adopted on October 13, 2012.
the City, upon request with reasonable notice, to review at Grantee’s local office its gross revenue records as may be necessary to monitor compliance with this section.

3. Franchise Fee Audit. The Grantee will fully cooperate with a franchise fee audit performed by a professional firm that is chosen by the City. The costs associated with the audit will be paid for by the City, except that the Grantee shall pay for the costs if the audit shows an underpayment of franchise fees in excess of five percent (5%) or more for a reporting period.

4. Franchise Fee Increases. The City may request an increase in franchise fees at any time during the term of the franchise, equal to the maximum percentage allowed by Federal law. However, such request shall be made in writing and the Grantee will not be liable for said increase until proper notice, as defined by Federal law, is given to its subscriber. Prior to making a final decision regarding an increase in franchise fees, the City shall conduct a public hearing and shall grant an opportunity to the Grantee to discuss the proposed increase in franchise fee.

5. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five years from the date on which payment by a Grantee is due.

6. Annual Review. The Grantee agrees to permit the City, upon request with reasonable notice, to review at Grantee’s local office its gross revenue records as may be necessary to monitor compliance with this section.

114.05 SYSTEM DESIGN.

1. The system will be designed so as to be two-way capable, and will be constructed in a manner that will meet or exceed FCC specifications.

2. The Grantee shall provide for the installation and operation of an emergency alert override system pursuant to FCC regulations on or before June 1, 2005.

3. The Grantee shall, upon request, provide without charge, one outlet of basic service and expanded basic service to the following public buildings in Garnavillo:
   - City Hall
   - Fire Station
   - Law Enforcement Center
   - Public Library
   - All Public School Buildings
   - Civic and Commercial Center

114.06 SYSTEM IMPROVEMENTS. Grantee shall provide written notice to the City verifying completion of any system improvements. The cable system shall be constructed in accordance with performance standards which meet or exceed FCC regulations. The cable system shall include or provide:

1. Pay-per-view capabilities.

2. Conversion. Subscribers shall not be charged by Grantee for conversion from the existing cable system to the new cable system. In the event that special additional or customized equipment is requested by any subscriber or is required to provide service to any subscriber, Grantee may charge the subscriber for such equipment.
3. **Notification.** Grantee will notify subscribers and the public in general of system improvements, using at least two of the following: bill stuffers, direct mail, news releases, radio announcements, CSR training, and community bulletin board announcements.

4. **Drop Maintenance.** Grantee shall maintain and replace subscriber drops during its normal operation of the cable system that do not meet the standards of the *National Electric Safety Code*. The cable system shall be designed to allow each subscriber drop to provide service to three (3) outlets.

5. **Penalty.** The City may assess against the Grantee a penalty of one hundred dollars ($100.00) per day for failure to meet the construction requirements of this chapter.

### 114.07 CAPITAL EQUIPMENT GRANT

The Grantee shall provide the City with a capital grant for the purchase of capital equipment and facilities in support of educational and governmental access programming if so requested to do so by the City. By accepting the capital grants from the Grantee, the City shall be required to support the operational costs of educational and government access with funding equal to sixty percent (60%) of the franchise fees received from the Grantee. The City shall provide documentation that this funding requirement has been met upon written request of the Grantee.

### 114.08 ACTIVATED CHANNELS

The Grantee shall provide a minimum of sixty-four (64) activated channels on the cable system on the effective date of the franchise.

### 114.09 SERVICE AREA

Grantee shall offer cable television residential service to all areas of the City which are in the corporate limits of the City on the effective date of the franchise. The Grantee shall, at its expense, promptly extend its system to have service available to all residents of:

1. Newly annexed areas to the City not then served by a cable system where the average density is at least six (6) dwelling units per quarter lineal mile or of proposed trunk and feeder cable route.

2. New housing areas developed within the City limits, providing the new areas developed meet the requirements of subsection 1 of this section.

3. Any new single family dwelling unit, multiple dwelling unit or other residential unit or commercial establishment within two hundred (200) feet of existing distribution system in the City shall be extended cable simultaneously with electric power and telephone utilities whenever reasonably possible.

### 114.10 FRANCHISE NONEXCLUSIVE

Consistent with the requirements of this chapter, the franchise shall not be construed as any limitation upon the right of the City to grant to other persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public ways or public places. The City specifically reserves the right to grant at any time during the term of the franchise or renewal thereof, if any, such additional franchises for a cable system as it deems appropriate.

### 114.11 POLICE POWERS

In accepting the franchise, Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary for the safety and welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers.
114.12 TRANSFER OF FRANCHISE. The Grantee’s right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity, controlling, controlled by, or under common control with the Grantee, without the prior consent of the City. Such consent shall not be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of the Grantee in the franchise in order to secure indebtedness. Within 30 days of receiving the request for transfer, the City shall in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee.

114.13 EMERGENCY ALERT SYSTEM. The Grantee shall, in the case of any emergency or disaster, make its entire cable system available without charge to the City or to any other governmental or civil defense agency that the City shall designate. The cable system shall be engineered to provide an audio and video alert system to allow authorized officials to automatically override the audio and video signal on all channels and transmit and report emergency information pursuant to FCC regulations. The City shall hold the Grantee, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorney’s fees and costs, provided that the emergency alert system is in good repair and is operational as required by FCC regulations and the franchise agreement. The Grantee will install and maintain a back up generator at its headend that will provide the needed power to generate the headend in the event of a power outage.

114.14 ENFORCEMENT AND TERMINATION OF FRANCHISE.

1. Notice of Violation. In the event that the City believes that the Grantee has not complied with the terms of the franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

2. Grantee’s Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 1: (a) to respond to the City, contesting the assertion of noncompliance; or (b) to cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

3. Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 1 pursuant to the procedures set forth in subsection 2, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to subsection 2 above, the City shall schedule a public hearing to investigate the default. The City shall notify the Grantee in writing of the time and place of such meeting no less than five business days in advance and provide the Grantee with an opportunity to be heard.

4. Enforcement. Subject to applicable Federal and State law, in the event the City, after such public hearing, determines that the Grantee is in default of any provision of the franchise, the City may:

   A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;

   B. Commence an action at law for monetary damages or seek other equitable relief; or
C. In the case of a substantial default of a material provision of the franchise, declare the franchise agreement to be revoked in accordance with the procedures outlined in this section.

The City shall give written notice to the Grantee of its intent to revoke the franchise on the basis of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a response satisfactory from the Grantee, it may then seek termination of the franchise at a public meeting. The City shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination. At the designated meeting, the City shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City de novo, and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City’s rights under the franchise in lieu of revocation of the franchise.

5. Termination of Franchise.

A. Grounds for Revocation. The City reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:

- If the Grantee should default in the performance of any of its material obligations under the Cable Franchise Regulatory Ordinance or this chapter and fails to cure the default within sixty (60) days after receipt of written notice of the default from the City, or such longer time as specified by the City.

- If a petition is filed by or against the Grantee under the Bankruptcy Act or any other insolvency or creditors’ rights law, State or Federal, and the Grantee shall fail to have it dismissed.

- If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of the Grantee’s assets.

- If the Grantee makes an assignment for the benefit of creditors.

- If the Grantee violates any order or ruling of any State or Federal regulatory body having jurisdiction over the Grantee, unless the Grantee or any party similarly affected is lawfully contesting the legality or applicability of such order or ruling and has received a stay from a Court of appropriate jurisdiction.

- If the Grantee evades any of the provisions of the Cable Franchise Regulatory Ordinance or this chapter.

- If the Grantee practices any intentional fraud or deceit upon the City or cable subscribers.
• If the Grantee materially misrepresents facts in the application for a franchise.
• If the Grantee ceases to provide services over the cable system for seven (7) consecutive days for any reason within the control of the Grantee.

B. Restoration of Property. In removing its plant, structures and equipment, the Grantee shall refill at its own expense any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee’s removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance indemnity provided in the Regulatory Ordinance and the performance bond in Section 113.15 shall continue in full force and effect during the period of the removal.

C. Reimbursement of Costs. In the event of a failure by the Grantee to complete any work as required above or any work required by law or ordinance within the time established and to the reasonable satisfaction of the City, after due notice and opportunity to cure, the City may cause such work to be done and the Grantee shall reimburse the City the costs thereof within thirty (30) days after receipt of an itemized list of such costs or the City may recover such costs.

114.15 FAITHFUL PERFORMANCE BOND. Upon acceptance of a franchise, the Grantee shall submit and maintain throughout the term of the franchise, a faithful performance bond in the amount of one hundred thousand dollars ($100,000.00). The bond shall insure compliance with all applicable laws, regulations, ordinances and provisions of this permit, shall provide for recoverable loss or damages, compensation, indemnification, reasonable attorney fees, cost of removal or abandonment of Grantee’s property, and shall cover penalties of one hundred dollars ($100.00) per day for failure to meet the construction requirements of any franchise agreement.

114.16 REVIEW SESSIONS.

1. Purpose of Review Sessions. In recognition of the fact that a great many technical, financial, marketing and legal uncertainties are associated with all aspects of cable communications at the present time, it is the intent of the City to provide for a maximum feasible degree of flexibility in a franchise throughout its term to achieve an advanced and modern cable system for the City. The principal means for accomplishing this flexibility will be the scheduled review sessions provided for in this chapter. It is intended that such review sessions will serve as a means of cooperatively working out solutions to problems that develop. Furthermore, such review sessions shall be two-way processes. For example, if either party has perceived that some major problem has developed, the session shall be devoted primarily to working out solutions acceptable to both parties.

2. Topics to be Covered. The City and the Grantee shall hold scheduled review sessions on the third, sixth, and ninth anniversary dates of the effective date of the franchise agreement. All such review sessions shall be open to the public and notice thereof shall be published once, not less than four (4) days or more than twenty (20)
days before each review session, as provided by law. The published notice shall specify the topics to be discussed. The review sessions may be canceled by mutual agreement of the City and Grantee. The following topics may be discussed at every scheduled review session:

- Recent and developing judicial and Federal communications rulings service rate structures
- Free and discounted services
- Application of new technology or new developments cable system performance
- Cable system extension policy
- Services provided
- Programming offered
- Customer complaints review
- Community development and education interconnection
- New services
- Subscriber privacy abuse issues new developments
- Franchise fees

Other topics, in addition to those listed, may be added by either party. Members of the general public may also request additional topics.

114.17 EQUAL PROTECTION. In the event the City enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the City’s streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

114.18 INSURANCE COVERAGE. The Grantee shall provide a certificate of insurance designating the City as an “additional insured.” The Grantee shall maintain and provide to the City proof of public liability insurance for not less than the following amounts:

- $2,000,000 – any one occurrence, bodily injury or property damage
- $2,000,000 – products/completed operations annual aggregate liability
- $2,000,000 – general aggregate

114.19 NOTICES. Unless expressly otherwise agreed between the parties, every notice or response required by this chapter to be served upon the City or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid.

(Ch. 114 – Ord. 15-2012 – Nov. 14 Supp.)
CHAPTER 120
LIQUOR LICENSES AND WINE AND BEER PERMITS

120.01 LICENSE OR PERMIT REQUIRED. No person shall manufacture for sale, import, sell, or offer or keep for sale, alcoholic liquor, wine, or beer without first securing a liquor control license, wine permit or beer permit in accordance with the provisions of Chapter 123 of the Code of Iowa.

(Code of Iowa, Sec. 123.22, 123.122 & 123.171)

120.02 GENERAL PROHIBITION. It is unlawful to manufacture for sale, sell, offer or keep for sale, possess or transport alcoholic liquor, wine or beer except upon the terms, conditions, limitations and restrictions enumerated in Chapter 123 of the Code of Iowa, and a license or permit may be suspended or revoked or a civil penalty may be imposed for a violation thereof.

(Code of Iowa, Sec. 123.2, 123.39 & 123.50)

120.03 INVESTIGATION. Upon receipt of an application for a liquor license, wine or beer permit, the Clerk may forward it to the Police Chief, who shall then conduct an investigation and submit a written report as to the truth of the facts averred in the application. The Fire Chief may also inspect the premises to determine if they conform to the requirements of the City. The Council shall not approve an application for a license or permit for any premises which does not conform to the applicable law and ordinances, resolutions and regulations of the City.

(Code of Iowa, Sec. 123.30)

120.04 ACTION BY COUNCIL. The Council shall either approve or disapprove the issuance of the liquor control license or retail wine or beer permit and shall endorse its approval or disapproval on the application, and thereafter the application, necessary fee and bond, if required, shall be forwarded to the Alcoholic Beverages Division of the State Department of Commerce for such further action as is provided by law.

(Code of Iowa, Sec. 123.32 [2])

120.05 PROHIBITED SALES AND ACTS. A person or club holding a liquor license or retail wine or beer permit and the person’s or club’s agents or employees shall not do any of the following:

1. Sell, dispense, or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

(Code of Iowa, Sec. 123.49[1])

2. Sell or dispense any alcoholic beverage, wine, or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. on a weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday; however, a holder of a license or
permit granted the privilege of selling alcoholic liquor, beer, or wine on Sunday may sell or dispense alcoholic liquor, beer, or wine between the hours of 8:00 a.m. on Sunday and 2:00 a.m. of the following Monday, and further provided that a holder of any class of liquor control license or the holder of a class “B” beer permit may sell or dispense alcoholic liquor, wine, or beer for consumption on the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on Monday when that Monday is New Year’s Day and beer for consumption off the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday when that Sunday is the day before New Year’s Day.

(Code of Iowa, Sec. 123.49[2b and 2k] & 123.150)

3. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members, to sales by a hotel or motel to bona fide registered guests or to retail sales by the managing entity of a convention center, civic center, or events center.

(Code of Iowa, Sec. 123.49[2c])

4. Employ a person under eighteen (18) years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.

(Code of Iowa, Sec. 123.49[2f])

5. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee’s place of business.

(Code of Iowa, Sec. 123.49[2i])

6. Knowingly permit any gambling, except in accordance with Iowa law, or knowingly permit any solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

(Code of Iowa, Sec. 123.49[2a])

7. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

(Code of Iowa, Sec. 123.49[2j])

8. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the Alcoholic Beverages Division of the State Department of Commerce and except mixed drinks or cocktails mixed on the premises for immediate consumption. However, mixed drinks or cocktails that are mixed on the premises and are not for immediate consumption may be consumed on the licensed premises, subject to rules adopted by the Alcoholic Beverages Division.

(Ord. 11-2012 – Sep. 12 Supp.)

(Code of Iowa, Sec. 123.49[2d])

9. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been reused or adulterated.

(Code of Iowa, Sec. 123.49[2e])

10. Allow any person other than the licensee, permittee, or employees of the licensee or permittee to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as allowed by State law.

(Code of Iowa, Sec. 123.49[2g])
CHAPTER 120  LIQUOR LICENSES AND WINE AND BEER PERMITS

11. Sell, give, possess, or otherwise supply a machine which is used to vaporize an alcoholic beverage for the purpose of being consumed in a vaporized form.
   
   *(Code of Iowa, Sec. 123.49[21]*)

12. Permit or allow any person under twenty-one (21) years of age to remain upon licensed premises unless over fifty percent (50%) of the dollar volume of the business establishment comes from the sale and serving of prepared foods. This provision does not apply to holders of a class “C” beer permit only.

120.06 UNDERAGE PERSONS.

1. For purposes of this section, “dispense” means the sale and/or other providing of alcoholic beverages for consumption on-premises.

2. It is unlawful for any person under the age for lawful purchase and/or possession of alcoholic beverages to enter any premises where alcoholic beverages are sold and dispensed between the hours of 9:00 p.m. and closing. This prohibition shall not apply to:

   A. An underage person who is an employee of the licensee or permittee.
   
   B. An underage person who is accompanied on the premises at all times by a parent, guardian or spouse who is of lawful age of possession and/or purchase of alcoholic beverages.
   
   C. An underage person on the premises during a period of time when the licensee or permittee, in accordance with a written plan given to and approved by the Police Chief, has suspended dispensing alcoholic beverages. During such period of time, the licensee or permittee shall not permit any underage persons to purchase or possess any alcoholic beverages on the premises. Police officers shall be admitted to the premises at any time to monitor compliance with all applicable laws.
   
   D. An underage person, 18 years and older, on the premises during a period of time when the licensee or permittee has not suspended dispensing alcoholic beverages. During such period of time, the licensee or permittee shall not permit any underage persons to purchase or possess any alcoholic beverages on the premises. Police officers shall be admitted to the premises at any time to monitor compliance with all applicable laws.

3. No licensee or permittee, or agent or employee thereof, shall allow any person under the age for lawful possession and/or purchase of alcoholic beverages to enter or remain upon the premises between the hours of nine o’clock (9:00) p.m. and closing where the business conducted includes the sale and dispensing of alcoholic beverages except as permitted in this section. The licensee or permittee of any business that sells and dispenses alcoholic beverages for on-premises consumption shall be required to post in a conspicuous place a note stating:

   **NOTICE TO PERSONS UNDER THE LAWFUL AGE FOR POSSESSION AND/OR PURCHASE OF ALCOHOLIC BEVERAGES:** YOU ARE SUBJECT TO A MAXIMUM FINE OF $200.00 FOR BEING ON THESE PREMISES BETWEEN THE HOURS OF 9:00 P.M. AND CLOSING, UNLESS YOU ARE ACCOMPANIED BY A PARENT, GUARDIAN OR SPOUSE WHO IS OF LEGAL AGE FOR THE PURCHASE AND/OR POSSESSION OF ALCOHOLIC BEVERAGES.
120.07 AMUSEMENT DEVICES. The following provisions pertain to electronic or mechanical amusement devices, which are allowed only in premises with a liquor control license or beer permit as specifically authorized in Section 99B.10 of the Code of Iowa.

(Code of Iowa, Sec. 99B.10C)

1. As used in this section an “electronic or mechanical amusement device” means a device that awards a prize redeemable for merchandise on the premises where the device is located and which is required to be registered with the Iowa Department of Inspection and Appeals.

2. It is unlawful for any person under the age of twenty-one (21) to participate in the operation of an electrical or mechanical amusement device.

3. It is unlawful for any person owning or leasing an electrical or mechanical amusement device, or an employee of a person owning or leasing an electrical or mechanical amusement device, to knowingly allow a person under the age of 21 to participate in the operation of an electrical or mechanical amusement device.

4. It is unlawful for any person to knowingly participate in the operation of an electrical or mechanical amusement device with a person under the age of 21.
CHAPTER 121
CIGARETTE AND TOBACCO PERMITS

121.01  DEFINITIONS.  For use in this chapter the following terms are defined:
(Code of Iowa, Sec. 453A.1)

1. “Alternative nicotine product” means a product, not consisting of or containing tobacco, that provides for the ingestion into the body of nicotine, whether by chewing, absorbing, dissolving, inhaling, snorting, or sniffing, or by any other means. “Alternative nicotine product” does not include cigarettes, tobacco products, or vapor products, or a product that is regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

2. “Cigarette” means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. However, this definition is not to be construed to include cigars.

3. “Place of business” means any place where cigarettes or tobacco products are sold, stored or kept for the purpose of sale or consumption by a retailer.

4. “Retailer” means every person who sells, distributes or offers for sale for consumption, or possesses for the purpose of sale for consumption, cigarettes, alternative nicotine products, or vapor products, irrespective of the quantity or amount or the number of sales, or who engages in the business of selling tobacco, tobacco products, alternative nicotine products, or vapor products to ultimate consumers.

5. “Self-service display” means any manner of product display, placement, or storage from which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.

6. “Tobacco products” means the following: cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts or refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking, but does not mean cigarettes.

7. “Vapor product” means any noncombustible product, which may or may not contain nicotine, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from a solution or other substance. “Vapor product”
includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any cartridge or other container of a solution or other substance, which may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. “Vapor product” does not include a product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

(Ord. 08-2014 – Nov. 14 Supp.)

121.02 PERMIT REQUIRED.

1. Retail Cigarette Permits. It is unlawful for any person, other than a holder of a retail permit, to sell cigarettes, alternative nicotine products, or vapor products at retail and no retailer shall distribute, sell, or solicit the sale of any cigarettes, alternative nicotine products, or vapor products within the City without a valid permit for each place of business. The permit shall, at all times, be publicly displayed at the place of business so as to be easily seen by the public and the persons authorized to inspect the place of business.

(Code of Iowa, Sec. 453A.13)

2. Retail Tobacco Permits. It is unlawful for any person to engage in the business of a retailer of tobacco, tobacco products, alternative nicotine products, or vapor products at any place of business without first having received a permit as a retailer for each place of business owned or operated by the retailer.

(Code of Iowa, Sec. 453A.47A)

A retailer who holds a retail cigarette permit is not required to also obtain a retail tobacco permit. However, if a retailer only holds a retail cigarette permit and that permit is suspended, revoked, or expired, the retailer shall not sell any tobacco, tobacco products, alternative nicotine products, or vapor products, during such time.

(Ord. 08-2014 – Nov. 14 Supp.)

121.03 APPLICATION. A completed application on forms furnished by the State Department of Revenue or on forms made available or approved by the Department and accompanied by the required fee shall be filed with the Clerk. Renewal applications shall be filed at least five (5) days prior to the last regular meeting of the Council in June. If a renewal application is not timely filed, and a special Council meeting is called to act on the application, the costs of such special meeting shall be paid by the applicant.

(Code of Iowa, Sec. 453A.13 & 453A.47A)

121.04 FEES. The fee for a retail cigarette or tobacco permit shall be as follows:

(Code of Iowa, Sec. 453A.13 & 453A.47A)

<table>
<thead>
<tr>
<th>FOR PERMITS GRANTED DURING:</th>
<th>FEE:</th>
</tr>
</thead>
<tbody>
<tr>
<td>July, August or September</td>
<td>$ 75.00</td>
</tr>
<tr>
<td>October, November or December</td>
<td>$ 56.25</td>
</tr>
<tr>
<td>January, February or March</td>
<td>$ 37.50</td>
</tr>
<tr>
<td>April, May or June</td>
<td>$ 18.75</td>
</tr>
</tbody>
</table>

121.05 ISSUANCE AND EXPIRATION. Upon proper application and payment of the required fee, a permit shall be issued. Each permit issued shall describe clearly the place of business for which it is issued and shall be nonassignable. All permits expire on June 30 of
each year. The Clerk shall submit a duplicate of any application for a permit, and any permit issued, to the Iowa Department of Public Health within thirty (30) days of issuance.

121.06 REFUNDS. A retailer may surrender an unrevoked permit and receive a refund from the City, except during April, May, or June, in accordance with the schedule of refunds as provided in Section 453A.13 or 453A.47A of the Code of Iowa. 

(Code of Iowa, 453A.13 & 453A.47A)

121.07 PERSONS UNDER LEGAL AGE. No person shall sell, give, or otherwise supply any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes to any person under eighteen (18) years of age. The provision of this section includes prohibiting a minor from purchasing tobacco, tobacco products, alternative nicotine products, vapor products, and cigarettes from a vending machine. If a retailer or employee of a retailer violates the provisions of this section, the Council shall, after written notice and hearing, and in addition to the other penalties fixed for such violation, assess the following:

1. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars ($300.00). Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of fourteen (14) days.

2. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars ($1,500.00) or the retailer’s permit shall be suspended for a period of thirty (30) days. The retailer may select its preference in the penalty to be applied under this subsection.

3. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of $1,500.00 and the retailer’s permit shall be suspended for a period of 30 days.

4. For a fourth violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of $1,500.00 and the retailer’s permit shall be suspended for a period of sixty (60) days.

5. For a fifth violation within a period of four years, the retailer’s permit shall be revoked.

The Clerk shall give ten (10) days’ written notice to the retailer by mailing a copy of the notice to the place of business as it appears on the application for a permit. The notice shall state the reason for the contemplated action and the time and place at which the retailer may appear and be heard.

(Code of Iowa, Sec. 453A.2, 453A.22 and 453A.36[6])

(Ord. 08-2014 – Nov. 14 Supp.)

121.08 SELF-SERVICE SALES PROHIBITED. Except for the sale of cigarettes through a cigarette vending machine as provided in Section 453A.36(6) of the Code of Iowa, a retailer shall not sell or offer for sale tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes through the use of a self-service display.

(Code of Iowa, Sec. 453A.36A)

(Ord. 08-2014 – Nov. 14 Supp.)

121.09 PERMIT REVOCATION. Following a written notice and an opportunity for a hearing, as provided by the Code of Iowa, the Council may also revoke a permit issued pursuant to this chapter for a violation of Division I of Chapter 453A of the Code of Iowa or
any rule adopted thereunder. If a permit is revoked, a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the Council. The Clerk shall report the revocation or suspension of a retail permit to the Iowa Department of Public Health within thirty (30) days of the revocation or suspension.

(Code of Iowa, Sec. 453A.22)
CHAPTER 122

PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

122.01 PURPOSE. The purpose of this chapter is to protect residents of the City against fraud, unfair competition and intrusion into the privacy of their homes by licensing and regulating peddlers, solicitors and transient merchants.

122.02 DEFINITIONS. For use in this chapter the following terms are defined:

1. “Peddler” means any person carrying goods or merchandise who sells or offers for sale for immediate delivery such goods or merchandise from house to house or upon the public street.

2. “Solicitor” means any person who solicits or attempts to solicit from house to house or upon the public street any contribution or donation or any order for goods, services, subscriptions or merchandise to be delivered at a future date.

3. “Transient merchant” means any person who engages in a temporary or itinerant merchandising business and in the course of such business hires, leases or occupies any building or structure whatsoever, or who operates out of a vehicle which is parked anywhere within the City limits. Temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader or auctioneer does not exempt any person from being considered a transient merchant.

122.03 LICENSE REQUIRED. Any person engaging in peddling, soliciting or in the business of a transient merchant in the City without first obtaining a license as herein provided is in violation of this chapter.

122.04 APPLICATION FOR LICENSE. An application in writing shall be filed with the Clerk for a license under this chapter. Such application shall set forth the applicant’s name, permanent and local address and business address if any. The application shall also set forth the applicant’s employer, if any, and the employer’s address, the nature of the applicant’s business, the last three places of such business and the length of time sought to be covered by the license. An application fee of ten dollars ($10.00) shall be paid at the time of filing such application to cover the cost of investigating the facts stated therein.

122.05 LICENSE FEES. The following license fees shall be paid to the Clerk prior to the issuance of any license.
122.06 BOND REQUIRED. Before a license under this chapter is issued to a transient merchant, an applicant shall provide to the Clerk evidence that the applicant has filed a bond with the Secretary of State in accordance with Chapter 9C of the Code of Iowa.

122.07 LICENSE ISSUED. If the Clerk finds the application is completed in conformance with the requirements of this chapter, the facts stated therein are found to be correct and the license fee paid, a license shall be issued immediately.

122.08 DISPLAY OF LICENSE. Each solicitor or peddler shall keep such license in possession at all times while doing business in the City and shall, upon the request of prospective customers, exhibit the license as evidence of compliance with all requirements of this chapter. Each transient merchant shall display publicly such merchant’s license in the merchant’s place of business.

122.09 LICENSE NOT TRANSFERABLE. Licenses issued under the provisions of this chapter are not transferable in any situation and are to be applicable only to the person filing the application.

122.10 TIME RESTRICTION. All peddler’s and solicitor’s licenses shall provide that said licenses are in force and effect only between the hours of 8:00 a.m. and 6:00 p.m.

122.11 REVOCATION OF LICENSE. After notice and hearing, the Clerk may revoke any license issued under this chapter for the following reasons:

1. Fraudulent Statements. The licensee has made fraudulent statements in the application for the license or in the conduct of the business.
2. Violation of Law. The licensee has violated this chapter or has otherwise conducted the business in an unlawful manner.
3. Endangered Public Welfare, Health or Safety. The licensee has conducted the business in such manner as to endanger the public welfare, safety, order or morals.

122.12 NOTICE. The Clerk shall send a notice to the licensee at the licensee’s local address, not less than ten (10) days before the date set for a hearing on the possible revocation of a license. Such notice shall contain particulars of the complaints against the licensee, the ordinance provisions or State statutes allegedly violated, and the date, time and place for hearing on the matter.

122.13 HEARING. The Clerk shall conduct a hearing at which both the licensee and any complainants shall be present to determine the truth of the facts alleged in the complaint and
notice. Should the licensee, or authorized representative, fail to appear without good cause, the Clerk may proceed to a determination of the complaint.

122.14 RECORD AND DETERMINATION. The Clerk shall make and record findings of fact and conclusions of law, and shall revoke a license only when upon review of the entire record the Clerk finds clear and convincing evidence of substantial violation of this chapter or State law.

122.15 APPEAL. If the Clerk revokes or refuses to issue a license, the Clerk shall make a part of the record the reasons therefor. The licensee, or the applicant, shall have a right to a hearing before the Council at its next regular meeting. The Council may reverse, modify or affirm the decision of the Clerk by a majority vote of the Council members present and the Clerk shall carry out the decision of the Council.

122.16 EFFECT OF REVOCATION. Revocation of any license shall bar the licensee from being eligible for any license under this chapter for a period of one year from the date of the revocation.

122.17 REBATES. Any licensee, except in the case of a revoked license, shall be entitled to a rebate of part of the fee paid if the license is surrendered before it expires. The amount of the rebate shall be determined by dividing the total license fee by the number of days for which the license was issued and then multiplying the result by the number of full days not expired. In all cases, at least five dollars ($5.00) of the original fee shall be retained by the City to cover administrative costs.

122.18 LICENSE EXEMPTIONS. The following are excluded from the application of this chapter.

1. Newspapers. Persons delivering, collecting for or selling subscriptions to newspapers.
2. Club Members. Members of local civic and service clubs, Boy Scout, Girl Scout, 4-H Clubs, Future Farmers of America and similar organizations.
3. Local Residents and Farmers. Local residents and farmers who offer for sale their own products.
5. Route Sales. Route delivery persons who only incidentally solicit additional business or make special sales.
6. Resale or Institutional Use. Persons customarily calling on businesses or institutions for the purposes of selling products for resale or institutional use.

122.19 CHARITABLE AND NONPROFIT ORGANIZATIONS. Authorized representatives of charitable or nonprofit organizations operating under the provisions of Chapter 504A of the Code of Iowa desiring to solicit money or to distribute literature are exempt from the operation of Sections 122.04 and 122.05. All such organizations are required to submit in writing to the Clerk the name and purpose of the cause for which such activities are sought, names and addresses of the officers and directors of the organization, the period during which such activities are to be carried on, and whether any commissions, fees or wages are to be charged by the solicitor and the amount thereof. If the Clerk finds that the
organization is a bona fide charity or nonprofit organization the Clerk shall issue, free of charge, a license containing the above information to the applicant. In the event the Clerk denies the exemption, the authorized representatives of the organization may appeal the decision to the Council, as provided in Section 122.15 of this chapter.
CHAPTER 123

HOUSE MOVERS

123.01 HOUSE MOVER DEFINED. A “house mover” means any person who undertakes to move a building or similar structure upon, over or across public streets or property when the building or structure is of such size that it requires the use of skids, jacks, dollies or any other specialized moving equipment.

123.02 PERMIT REQUIRED. It is unlawful for any person to engage in the activity of house mover as herein defined without a valid permit from the City for each house, building or similar structure to be moved. Buildings of less than one hundred (100) square feet are exempt from the provisions of this chapter.

123.03 APPLICATION. Application for a house mover’s permit shall be made in writing to the Clerk. The application shall include:

1. Name and Address. The applicant’s full name and address and if a corporation the names and addresses of its principal officers.

2. Building Location. An accurate description of the present location and future site of the building or similar structure to be moved.

3. Routing Plan. A routing plan approved by the Police Chief, street superintendent, and public utility officials. The route approved shall be the shortest route compatible with the greatest public convenience and safety.

123.04 BOND REQUIRED. The applicant shall post with the Clerk a penal bond in the minimum sum of ten thousand dollars ($10,000.00) issued by a surety company authorized to issue such bonds in the State. The bond shall guarantee the permittee’s payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of moving the building or structure.

123.05 INSURANCE REQUIRED. Each applicant shall also file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the applicant and all agents and employees for the following minimum amounts:

1. Bodily Injury - $50,000 per person; $100,000 per accident.

2. Property Damage - $50,000 per accident.

123.06 PERMIT FEE. A permit fee of twenty-five dollars ($25.00) shall be payable at the time of filing the application with the Clerk. A separate permit shall be required for each house, building or similar structure to be moved.
123.07 PERMIT ISSUED. Upon approval of the application, filing of bond and insurance certificate, and payment of the required fee, the Clerk shall issue a permit.

123.08 PUBLIC SAFETY. At all times when a building or similar structure is in motion upon any street, alley, sidewalk or public property, the permittee shall maintain flagmen at the closest intersections or other possible channels of traffic to the sides, behind and ahead of the building or structure. At all times when the building or structure is at rest upon any street, alley, sidewalk or public property the permittee shall maintain adequate warning signs or lights at the intersections or channels of traffic to the sides, behind and ahead of the building or structure.

123.09 TIME LIMIT. No house mover shall permit or allow a building or similar structure to remain upon any street or other public way for a period of more than twelve (12) hours without having first secured the written approval of the City.

123.10 REMOVAL BY CITY. In the event any building or similar structure is found to be in violation of Section 123.09 the City is authorized to remove such building or structure and assess the costs thereof against the permit holder and the surety on the permit holder’s bond.

123.11 PROTECT PAVEMENT. It is unlawful to move any house or building of any kind over any pavement, unless the wheels or rollers upon which the house or building is moved are at least one (1) inch in width for each one thousand (1,000) pounds of weight of such building. If there is any question as to the weight of a house or building, the estimate of the City as to such weight shall be final.

123.12 OVERHEAD WIRES. The holder of any permit to move a building shall see that all telephone, cable television and electric wires and poles are removed when necessary and replaced in good order, and shall be liable for the costs of the same.

[The next page is 635]
CHAPTER 135

STREET USE AND MAINTENANCE

135.01 Removal of Warning Devices. It is unlawful for a person to willfully remove, throw down, destroy or carry away from any street or alley any lamp, obstruction, guard or other article or things, or extinguish any lamp or other light, erected or placed thereupon for the purpose of guarding or enclosing unsafe or dangerous places in said street or alley without the consent of the person in control thereof.

(Code of Iowa, Sec. 716.1)

135.02 Obstructing or Defacing. It is unlawful for any person to obstruct, deface, or injure any street or alley in any manner.

(Code of Iowa, Sec. 716.1)

135.03 Placing Debris On. It is unlawful for any person to throw or deposit on any street or alley any glass, glass bottle, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, leaves, grass or any other debris likely to be washed into the storm sewer and clog the storm sewer, or any substance likely to injure any person, animal or vehicle.

(Code of Iowa, Sec. 321.369)

135.04 Playing In. It is unlawful for any person to coast, sled or play games on streets or alleys, except in the areas blocked off by the City for such purposes.

(Code of Iowa, Sec. 364.12[2])

135.05 Traveling on Barricaded Street or Alley. It is unlawful for any person to travel or operate any vehicle on any street or alley temporarily closed by barricades, lights, signs, or flares placed thereon by the authority or permission of any City official, police officer or member of the fire department.

135.06 Use for Business Purposes. It is unlawful to park, store or place, temporarily or permanently, any machinery or junk or any other goods, wares, and merchandise of any kind upon any street or alley for the purpose of storage, exhibition, sale or offering same for sale, without permission of the Council.

135.07 Washing Vehicles. It is unlawful for any person to use any public sidewalk, street or alley for the purpose of washing or cleaning any automobile, truck equipment, or any vehicle of any kind when such work is done for hire or as a business. This does not prevent any person from washing or cleaning his or her own vehicle or equipment when it is lawfully parked in the street or alley.
135.08 **BURNING PROHIBITED.** No person shall burn any trash, leaves, rubbish or other combustible material in any curb and gutter or on any paved or surfaced street or alley.

135.09 **EXCAVATIONS.** No person shall dig, excavate or in any manner disturb any street, parking or alley except in accordance with the following:

1. **Permit Required.** No excavation shall be commenced without first obtaining a permit therefor. A written application for such permit shall be filed with the City and shall contain the following:
   
   A. An exact description of the property, by lot and street number, in front of or along which it is desired to excavate;
   
   B. A statement of the purpose, for whom and by whom the excavation is to be made;
   
   C. The person responsible for the refilling of said excavation and restoration of the street or alley surface; and
   
   D. Date of commencement of the work and estimated completion date.

2. **Public Convenience.** Streets and alleys shall be opened in the manner which will cause the least inconvenience to the public and admit the uninterrupted passage of water along the gutter on the street.

3. **Barricades, Fencing and Lighting.** Adequate barricades, fencing and warning lights meeting standards specified by the City shall be so placed as to protect the public from hazard. Any costs incurred by the City in providing or maintaining adequate barricades, fencing or warning lights shall be paid to the City by the permit holder/property owner.

4. **Bond Required.** The applicant shall post with the City a penal bond in the minimum sum of one thousand dollars ($1,000.00) issued by a surety company authorized to issue such bonds in the State. The bond shall guarantee the permittee’s payment for any damage done to the City or to public property, and payment of all costs incurred by the City in the course of administration of this section. In lieu of a surety bond, a cash deposit of one thousand dollars ($1,000.00) may be filed with the City.

5. **Insurance Required.** Each applicant shall also file a certificate of insurance indicating that the applicant is carrying public liability insurance in effect for the duration of the permit covering the applicant and all agents and employees for the following minimum amounts:
   
   A. Bodily Injury - $50,000.00 per person; $100,000.00 per accident.
   
   B. Property Damage - $50,000.00 per accident.

6. **Restoration of Public Property.** Streets, sidewalks, alleys and other public property disturbed in the course of the work shall be restored to the condition of the property prior to the commencement of the work, or in a manner satisfactory to the City, at the expense of the permit holder/property owner.

7. **Inspection.** All work shall be subject to inspection by the City. Backfill shall not be deemed completed, nor resurfacing of any improved street or alley surface begun, until such backfill is inspected and approved by the City. The permit holder/property owner shall provide the City with notice at least twenty-four (24) hours prior to the time when inspection of backfill is desired.
8. Completion by the City. Should any excavation in any street or alley be discontinued or left open and unfinished for a period of twenty-four (24) hours after the approved completion date, or in the event the work is improperly done, the City has the right to finish or correct the excavation work and charge any expenses therefor to the permit holder/property owner.

9. Responsibility for Costs. All costs and expenses incident to the excavation shall be borne by the permit holder and/or property owner. The permit holder and owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by such excavation.

10. Notification. At least forty-eight (48) hours prior to the commencement of the excavation, excluding Saturdays, Sundays and legal holidays, the person performing the excavation shall contact the Statewide Notification Center and provide the center with the information required under Section 480.4 of the Code of Iowa.

11. Permit Issued. Upon approval of the application and filing of bond and insurance certificate, a permit shall be issued. A separate permit shall be required for each excavation.

135.10 MAINTENANCE OF PARKING OR TERRACE. It shall be the responsibility of the abutting property owner to maintain all property outside the lot and property lines and inside the curb lines upon the public streets, except that the abutting property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right-of-way. Maintenance includes timely mowing, trimming trees and shrubs and picking up litter.

(Code of Iowa, Sec. 364.12[2c])

135.11 FAILURE TO MAINTAIN PARKING OR TERRACE. If the abutting property owner does not perform an action required under the above section within a reasonable time, the City may perform the required action and assess the cost against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12[2e])

135.12 DUMPING OF SNOW. It is unlawful for any person to throw, push, or place or cause to be thrown, pushed or placed, any ice or snow from private property, sidewalks, or driveways onto the traveled way of a street or alley so as to obstruct gutters, or impede the passage of vehicles upon the street or alley or to create a hazardous condition therein; except where, in the cleaning of large commercial drives in the business district it is absolutely necessary to move the snow onto the street or alley temporarily, such accumulation shall be removed promptly by the property owner or agent. Arrangements for the prompt removal of such accumulations shall be made prior to moving the snow.

(Code of Iowa, Sec. 364.12[2])

135.13 DRIVEWAY CULVERTS. The property owner shall, at the owner’s expense, install any culvert deemed necessary under any driveway or any other access to the owner’s property, and before installing a culvert, permission must first be obtained from the City. If the event repairs are needed at any time with respect to culverts, it shall be the responsibility of the property owner to make such repairs, and, in the event the owner fails to do so, the City shall have the right to make the repairs. If the property owner fails to reimburse the City for the cost of said repairs, the cost shall be certified to the County Treasurer and specially assessed against the property as by law provided.
135.14 MAILBOXES. Mailboxes may be erected when they are allowed by the Post Office for mail delivery. The mailboxes must meet the Post Office guidelines and shall not create a nuisance in the right-of-way.

135.15 USE OF SKATEBOARDS. The use of skateboards, rollerblades, and roller skates is not allowed on any street or highway in the City.
### CHAPTER 136

**SIDEWALK REGULATIONS**

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#### 136.01 PURPOSE.
The purpose of this chapter is to enhance safe passage by citizens on sidewalks, to place the responsibility for the maintenance, repair, replacement or reconstruction of sidewalks upon the abutting property owner and to minimize the liability of the City.

#### 136.02 DEFINITIONS.
For use in this chapter the following terms are defined:

1. "Broom finish" means a sidewalk finish that is made by sweeping the sidewalk when it is hardening.
2. "Established grade" means that grade established by the City for the particular area in which a sidewalk is to be constructed.
3. "One-course construction" means that the full thickness of the concrete is placed at one time, using the same mixture throughout.
4. "Owner" means the person owning the fee title to property abutting any sidewalk and includes any contract purchaser for purposes of notification required herein. For all other purposes, "owner" includes the lessee, if any.
6. "Sidewalk" means all permanent public walks in business, residential or suburban areas.
7. "Sidewalk improvements" means the construction, reconstruction, repair, replacement or removal, of a public sidewalk and/or the excavating, filling or depositing of material in the public right-of-way in connection therewith.
8. "Wood float finish" means a sidewalk finish that is made by smoothing the surface of the sidewalk with a wooden trowel.

#### 136.03 REMOVAL OF SNOW, ICE AND ACCUMULATIONS.
It is the responsibility of the abutting property owners to remove snow, ice and accumulations promptly from sidewalks. If a property owner does not remove snow, ice or accumulations within a reasonable time, the City may do so and assess the costs against the property owner for collection in the same manner as a property tax.

*(Code of Iowa, Sec. 364.12[2b & e]*)
136.04 RESPONSIBILITY FOR MAINTENANCE. It is the responsibility of the abutting property owners to maintain in a safe and hazard-free condition any sidewalk outside the lot and property lines and inside the curb lines or traveled portion of the public street.

(Code of Iowa, Sec. 364.12 [2c])

136.05 CITY MAY ORDER REPAIRS. If the abutting property owner does not maintain sidewalks as required, the Council may serve notice on such owner, by certified mail, requiring the owner to repair, replace or reconstruct sidewalks within a reasonable time and if such action is not completed within the time stated in the notice, the Council may require the work to be done and assess the costs against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12[2d & e])

136.06 SIDEWALK CONSTRUCTION ORDERED. The Council may order the construction of permanent sidewalks upon any street or court in the City and may specially assess the cost of such improvement to abutting property owners in accordance with the provisions of Chapter 384 of the Code of Iowa.

(Code of Iowa, Sec. 384.38)

136.07 PERMIT REQUIRED. No person shall remove, reconstruct or install a sidewalk unless such person has obtained a permit from the City and has agreed in writing that said removal, reconstruction or installation will comply with all ordinances and requirements of the City for such work.

136.08 SIDEWALK STANDARDS. Sidewalks repaired, replaced or constructed under the provisions of this chapter shall be of the following construction and meet the following standards:

1. Cement. Portland cement shall be the only cement used in the construction and repair of sidewalks.

2. Construction. Sidewalks shall be of one-course construction.

3. Sidewalk Base. Concrete may be placed directly on compact and well-drained soil. Where soil is not well drained, a three (3) inch sub-base of compact, clean, coarse gravel or sand shall be laid. The adequacy of the soil drainage is to be determined by the City. Pour-overs are allowed as long as they meet all other standards.

4. Sidewalk Bed. The sidewalk bed shall be so graded that the constructed sidewalk will be at established grade.

5. Length, Width and Depth. Length, width and depth requirements are as follows:

   A. Residential sidewalks shall be at least four (4) feet wide and four (4) inches thick, and each section shall be no more than six (6) feet in length.

   B. Business District sidewalks shall extend from the property line to the curb. Each section shall be four (4) inches thick and no more than six (6) feet in length.

   C. Driveway areas shall be not less than six (6) inches in thickness.
6. **Location.** Residential sidewalks shall be located with the inner edge (edge nearest the abutting private property) two (2) feet from the property line, unless the Council establishes a different distance due to special circumstances.

7. **Grade.** Curb tops shall be on level with the centerline of the street which shall be the established grade.

8. **Elevations.** The street edge of a sidewalk shall be at an elevation even with the curb at the curb or not less than one-half (½) inch above the curb for each foot between the curb and the sidewalk.

9. **Slope.** All sidewalks shall slope one-quarter (¼) inch per foot toward the curb.

10. **Finish.** All sidewalks shall be finished with a “broom” or “wood float” finish.

11. **Curb Ramps and Sloped Areas for Persons with Disabilities.** If a street, road, or highway is newly built or reconstructed, a curb ramp or sloped area shall be constructed or installed at each intersection of the street, road, or highway with a sidewalk or path. If a sidewalk or path is newly built or reconstructed, a curb ramp or sloped area shall be constructed or installed at each intersection of the sidewalk or path with a street, highway, or road. Curb ramps and sloped areas that are required pursuant to this subsection shall be constructed or installed in compliance with applicable Federal requirements adopted in accordance with the Federal Americans with Disabilities Act, including (but not limited to) the guidelines issued by the Federal Architectural and Transportation Barriers Compliance Board.

(Ord. 06-2010 – Oct. 10 Supp.) (Code of Iowa, Sec. 216C.9)

**136.09 BARRICADES AND WARNING LIGHTS.** Whenever any material of any kind is deposited on any street, avenue, highway, passageway or alley when sidewalk improvements are being made or when any sidewalk is in a dangerous condition, it shall be the duty of all persons having an interest therein, either as the contractor or the owner, agent, or lessee of the property in front of or along which such material may be deposited, or such dangerous condition exists, to put in conspicuous places at each end of such sidewalk and at each end of any pile of material deposited in the street, a sufficient number of approved warning lights or flares, and to keep them lighted during the entire night and to erect sufficient barricades both at night and in the daytime to secure the same. The party or parties using the street for any of the purposes specified in this chapter shall be liable for all injuries or damage to persons or property arising from any wrongful act or negligence of the party or parties, or their agents or employees or for any misuse of the privileges conferred by this chapter or of any failure to comply with provisions hereof.

**136.10 FAILURE TO REPAIR OR BARRICADE.** It is the duty of the owner of the property abutting the sidewalk, or the owner’s contractor or agent, to notify the City immediately in the event of failure or inability to make necessary sidewalk improvements or to install or erect necessary barricades as required by this chapter.

**136.11 INTERFERENCE WITH SIDEWALK IMPROVEMENTS.** No person shall knowingly or willfully drive any vehicle upon any portion of any sidewalk or approach thereto while in the process of being improved or upon any portion of any completed sidewalk or approach thereto, or shall remove or destroy any part or all of any sidewalk or approach thereto, or shall remove, destroy, mar or deface any sidewalk at any time or destroy, mar, remove or deface any notice provided by this chapter.
136.12 AWNINGS. It is unlawful for a person to erect or maintain any awning over any sidewalk unless all parts of the awning are elevated at least eight (8) feet above the surface of the sidewalk and the roof or covering is made of duck, canvas or other suitable material supported by iron frames or brackets securely fastened to the building, without any posts or other device that will obstruct the sidewalk or hinder or interfere with the free passage of pedestrians.

136.13 ENCROACHING STEPS. It is unlawful for a person to erect or maintain any stairs or steps to any building upon any part of any sidewalk without permission by resolution of the Council.

136.14 OPENINGS AND ENCLOSURES. It is unlawful for a person to:

1. Stairs and Railings. Construct or build a stairway or passageway to any cellar or basement by occupying any part of the sidewalk, or to enclose any portion of a sidewalk with a railing without permission by resolution of the Council.

2. Openings. Keep open any cellar door, grating or cover to any vault on any sidewalk except while in actual use with adequate guards to protect the public.

3. Protect Openings. Neglect to properly protect or barricade all openings on or within six (6) feet of any sidewalk.

136.15 FIRES OR FUELS ON SIDEWALKS. It is unlawful for a person to make a fire of any kind on any sidewalk or to place or allow any fuel to remain upon any sidewalk.

136.16 DEFACING. It is unlawful for a person to scatter or place any paste, paint or writing on any sidewalk.

(Code of Iowa, Sec. 716.1)

136.17 DEBRIS ON SIDEWALKS. It is unlawful for a person to throw or deposit on any sidewalk any glass, nails, glass bottle, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris, or any substance likely to injure any person, animal or vehicle.

(Code of Iowa, Sec. 364.12 [2])

136.18 MERCHANDISE DISPLAY. It is unlawful for a person to place upon or above any sidewalk, any goods or merchandise for sale or for display in such a manner as to interfere with the free and uninterrupted passage of pedestrians on the sidewalk; in no case shall more than three (3) feet of the sidewalk next to the building be occupied for such purposes.

136.19 SALES STANDS. It is unlawful for a person to erect or keep any vending machine or stand for the sale of fruit, vegetables or other substances or commodities on any sidewalk without first obtaining a written permit from the Council.

136.20 SKATEBOARDS, ROLLER SKATES, AND ROLLERBLADES. Skateboards, roller skates, and rollerblades are not allowed on sidewalks in the business district, as defined in Section 60.02(1) of this Code of Ordinances. Whenever any person is riding a skateboard, roller skates, or rollerblades on a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing.

136.21 GOLF CARTS. Golf carts are not allowed on any sidewalk in the City.

(Ord. 06-2011 – Sep. 12 Supp.)
CHAPTER 137

VACATION AND DISPOSAL OF STREETS

137.01  POWER TO VACATE. When, in the judgment of the Council, it would be in the best interest of the City to vacate a street, alley, portion thereof or any public grounds, the Council may do so by ordinance in accordance with the provisions of this chapter.

(Code of Iowa, Sec. 364.12 [2a])

137.02  PLANNING AND ZONING COMMISSION. Any proposal to vacate a street, alley, portion thereof or any public grounds shall be referred by the Council to the Planning and Zoning Commission for its study and recommendation prior to further consideration by the Council. The Commission shall submit a written report including recommendations to the Council within thirty (30) days after the date the proposed vacation is referred to the Commission.

(Code of Iowa, Sec. 392.1)

137.03  NOTICE OF VACATION HEARING. The Council shall cause to be published a notice of public hearing of the time at which the proposal to vacate shall be considered.

137.04  FINDINGS REQUIRED. No street, alley, portion thereof or any public grounds shall be vacated unless the Council finds that:

1. Public Use. The street, alley, portion thereof or any public ground proposed to be vacated is not needed for the use of the public, and therefore, its maintenance at public expense is no longer justified.

2. Abutting Property. The proposed vacation will not deny owners of property abutting on the street or alley reasonable access to their property.

137.05  DISPOSAL OF VACATED STREETS OR ALLEYS. When in the judgment of the Council it would be in the best interest of the City to dispose of a vacated street or alley, portion thereof or public ground, the Council may do so in accordance with the provisions of Section 364.7, Code of Iowa.

(Code of Iowa, Sec. 364.7)

137.06  DISPOSAL BY GIFT LIMITED. The City may not dispose of real property by gift except to a governmental body for a public purpose or to a fair.

(Code of Iowa, Sec. 174.15[2] & 364.7[3])
The following ordinances, not codified herein and specifically saved from repeal, have been adopted vacating certain streets, alleys and/or public grounds and remain in full force and effect.

<table>
<thead>
<tr>
<th>ORDINANCE NO.</th>
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<td>83-1</td>
<td>July 5, 1983</td>
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<td>1-91</td>
<td>March 4, 1991</td>
<td>2-96</td>
<td>May 6, 1996</td>
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CHAPTER 138

STREET GRADES

138.01  ESTABLISHED GRADES. The grades of all streets, alleys and sidewalks, which have been heretofore established by ordinance are hereby confirmed, ratified and established as official grades.

138.02  RECORD MAINTAINED. The Clerk shall maintain a record of all established grades and furnish information concerning such grades upon request.

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<td>37</td>
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EDITOR’S NOTE

The following ordinances not codified herein, and specifically saved from repeal, have been adopted establishing street and/or sidewalk grades and remain in full force and effect.
CHAPTER 139
NAMING OF STREETS

139.01 NAMING NEW STREETS. New streets shall be assigned names in accordance with the following:

1. Extension of Existing Street. Streets added to the City that are natural extensions of existing streets shall be assigned the name of the existing street.

2. Resolution. All street names, except streets named as a part of a subdivision or platting procedure, shall be named by resolution.

3. Planning and Zoning Commission. Proposed street names shall be referred to the Planning and Zoning Commission for review and recommendation.

139.02 CHANGING NAME OF STREET. The Council may, by resolution, change the name of a street.

139.03 RECORDING STREET NAMES. Following official action naming or changing the name of a street, the Clerk shall file a copy thereof with the County Recorder, County Auditor and County Assessor.

(Code of Iowa, Sec. 354.26)

139.04 OFFICIAL STREET NAME MAP. Streets within the City are named as shown on the Official Street Name Map which is hereby adopted by reference and declared to be a part of this chapter. The Official Street Name Map shall be identified by the signature of the Mayor, and bearing the seal of the City under the following words: “This is to certify that this is the Official Street Name Map referred to in Section 139.04 of the Code of Ordinances of Garnavillo, Iowa.”

139.05 REVISION OF STREET NAME MAP. If in accordance with the provisions of this chapter, changes are made in street names, such changes shall be entered on the Official Street Name Map promptly after the change has been approved by the Council with an entry on the Official Street Name Map as follows: “On (date), by official action of the City Council, the following changes were made in the Official Street Name Map: (brief description),” which entry shall be signed by the Mayor and attested by the Clerk.
CHAPTER 140

CONTROLLED ACCESS FACILITIES

140.01 EXERCISE OF POLICE POWER. This chapter shall be deemed an exercise of the police power of the City under Chapter 306A, Code of Iowa, for the preservation of the public peace, health, safety and for the promotion of the general welfare.

(Code of Iowa, Sec. 306A.1)

140.02 DEFINITION. The term “controlled access facility” means a highway or street especially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air or view by reason of the fact that their property abuts upon such controlled access facility or for any other reason.

(Code of Iowa, Sec. 306A.2)

140.03 RIGHT OF ACCESS LIMITED. No person has any right of ingress or egress to or from abutting lands onto or across any controlled access facility, except at such designated points at which access is permitted.

(Code of Iowa, Sec. 306A.4)

140.04 ACCESS CONTROLS IMPOSED ON U.S. NO. 52. There are hereby fixed and established controlled access facilities on the Primary Road System extension improvement, Project No. FN-52-2(2)--21-22, Primary Road No. 52, within the City, described as follows:

    Beginning at Sta. 1082+52 at the south corporation line, thence along Primary Road Extension U.S. 52 to Sta. 1131+75 at the north corporation line

regulating access to and from abutting properties along said highway all in accordance with the plans for such improvement identified as Project No. FN-52-2(2)--21-22, on file in the office of the Clerk.
CHAPTER 141
RIGHT-OF-WAY MANAGEMENT

141.01 LEGISLATIVE POWER. By enactment of this chapter, the Council hereby exercises its lawful police power and common law authority, and all statutory authority which is available to it, but not limited to, the powers conferred on it under Iowa Law, including Iowa Code Sec. 364, and other provisions of law.

141.02 DEFINITIONS. The following definitions apply in this chapter of this Code, (hereinafter, “this chapter”). References hereafter to “sections” are, unless otherwise specified, references to section if this chapter. Defined terms remain defined terms whether or not capitalized.

1. “Applicant” means any Person requesting permission to Excavate or Obstruct a Right-of-Way.

2. “Business District” means any portion of the City of Garnavillo zoned for business or commercial use.

3. “City” means the City of Garnavillo, Iowa, and/or its elected officials, officers, employees, agents or any commission, committee or subdivision acting pursuant to lawfully delegated authority.

4. “City Cost” means the actual costs incurred by the City for managing Rights-of-Way including, but not limited to costs associated with registering of applicants; issuing, processing, and verifying Right-of-Way Permit applications; revoking Right-of-Way Permits; inspecting job sites; creating and updating mapping systems; determining the adequacy of Right-of-Way restoration; restoring work inadequately performed; maintaining, supporting, protecting or moving user equipment during Right-of-Way work; budget analysis; record keeping; legal assistance; systems analysis; and performing all of the other tasks required by this chapter, including other costs the City may incur in managing the provisions of this chapter except as expressly prohibited by law.
5. “City Inspector” means any Person authorized by the City to carry out inspections related to the provisions of this chapter.

6. “Degradation” means the accelerated depreciation of the Right-of-Way caused by Excavation in or disturbance of the Right-of-Way, resulting in the need to reconstruct such Right-of-Way earlier than would be required if the Excavation did not occur.

7. “Emergency” means a condition that (a) poses a clear and immediate danger to life or health, or of a significant loss of property; or (b) requires immediate repair or replacement in order to restore Service to a customer.

8. “Equipment” means any tangible thing located in any Right-of-Way; but shall not include plantings or gardens planted or maintained in the Right-of-Way between a Person’s property and the street curb.

9. “Excavate” means to dig into or in any way remove or physically disturb or penetrate any part of a Right-of-Way, except horticultural practices or penetrating the boulevard area to a depth of less than 12 inches.

10. “Excavation Permit” means the Permit which, pursuant to this chapter, must be obtained before a Person may excavate in a Right-of-Way. An excavation Permit allows the holder to Excavate that part of a Right-of-Way described in such Permit.

11. “Excavation Permit Fee” means money paid to the City by an Applicant to cover the costs as provided in Section 141.12.

12. “In”, when used in conjunction with “Right-of-Way”, means over, above, in, within, on, or under a Right-of-Way.

13. “Local Representative” means the Person or Persons, or designee of such Person of Persons, authorized by a Registrant to accept Service and to make decisions for the Registrant regarding all matters within the scope of this chapter.

14. “Obstruct” means to place any tangible object in a Right-of-Way so as to hinder free and open passage over that or any part of the Right-of-Way.

15. “Obstruction Permit” means the Permit which, pursuant to this chapter, must be obtained before a Person may Obstruct a Right-of-Way, allowing the holder to hinder free and open passage over the specified portion of a Right-of-Way by placing Equipment described therein on the Right-of-Way for the duration specified therein.

16. “Obstruction Permit Fee” means money paid to the City by a Registrant to cover the costs as provided in Section 141.12.

17. “Performance and Restoration Bond” means a performance bond or letter of credit posted to ensure the availability of sufficient funds to assure that all obligations pursuant to this chapter, including, but not limited to, Right-of-Way Excavation and Obstruction work, is timely and properly completed.

18. “Permittee” means any Person to whom a Permit to Excavate or Obstruct a Right-of-Way has been granted by the City under this chapter.

19. “Person” means any natural or corporate Person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have Equipment located in any Right-of-Way.
20. “Probation” means the status of a Person that has not complied with the conditions of this chapter.

21. “Probation Period” means one (1) year from the date that a Person has been notified in writing that they have been put on Probation.

22. “Registrant” means any Person who (1) has or seeks to have its Equipment located in any Right-of-Way, or (2) in any way occupies or uses, or seeks to occupy or use, the Right-of-Way or any Equipment located in the Right-of-Way and, accordingly, is required to register with the City.

23. “Restore” or “Restoration” means the process by which an Excavated or Obstructed Right-of-Way and surrounding area, including, but not limited to, pavement and foundation, is returned to the same condition that existed before the commencement of Excavation.

24. “Restoration Fee” means an amount of money paid to the City by a Permittee to cover the cost of Restoration.

25. “Right-of-Way” means the area on, below or above any real property in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of the City, including other dedicated Rights-of-Way for travel purposes and utility easements.

26. “Right-of-Way Permit” means either the Excavation Permit or the Obstruction Permit, or both, depending on the context, required by this chapter.

27. "Service" or "Utility Service" includes, but is not limited to, (a) those services provided by a public or private utility; and (b) a Telecommunications Right-of-Way User, pipeline, community antenna television, cable communications systems, fire and alarm communications, water, electricity, light, heat, cooling energy, or power services.

28. "Supplementary Application" means an application made to Excavate or Obstruct more of the Right-of-Way than allowed in, or to extend, a Permit that had already been issued.

29. "Telecommunications Right-of-Way User" means a Person owning or controlling a facility in the Right-of-Way, or seeking to own or control the same, that is used or intended to be used for transporting telecommunication or other voice or data information.

30. "Unusable Equipment" means Equipment located in the Right-of-Way which has remained unused for one (1) year and for which the Registrant is unable to provide proof that it has a plan to begin using it within the next twelve (12) months or a potential purchaser or user of the Equipment.

141.03 ADMINISTRATION. The City may designate a principal City official responsible for the administration of the Rights-of-Way, Right-of-Way Permits, and the ordinances related thereto. The City may delegate any or all of the duties hereunder.

141.04 REGISTRATION, BONDING AND RIGHT-OF-WAY OCCUPANCY.

1. Each Person which occupies, uses, or seeks to occupy or use, the Right-of-Way or any Equipment located in the Right-of-Way, including by lease, sublease or assignment, or who has, or seeks to have, Equipment located in any Right-of-Way must register with the City. Registration will consist of providing application
information to and as required by the City, paying a registration fee, and posting a Performance and Restoration Bond.

The Performance and Restoration Bond required in this section, and in Section 141.10.02; 141.13.02.B, and Section 141.32.1.B.03 shall be in an amount determined in the City's sole discretion, sufficient to serve as security for the full and complete performance of the obligations under this chapter, including any costs, expenses, damages, or loss the City pays or incurs because of any failure to comply with this chapter or any other applicable laws, regulations or standards. During periods of construction, repair or Restoration of Rights-of-Way or Equipment in Rights-of-Way, the Performance and Restoration Bond shall be in an amount sufficient to cover 100% of the estimated cost of such work, as documented by the Person proposing to perform such work, or in such lesser amount as may be determined by the City, taking into account the amount of Equipment in the Right-of-Way, the location and method of installation of the Equipment, the conflict or interference of such Equipment with the Equipment of other Persons, and the purposes and policies of this chapter. Sixty (60) days after completion of the work, the Performance and Restoration Bond may be reduced in the sole determination of the City.

2. No Person may construct, install, repair, remove, relocate, or perform any other service on, or use any Equipment or any part thereof located in any Right-of-Way without first being registered with the City.

3. Nothing herein shall be construed to restrict or regulate the planting or maintaining of plantings or gardens in the area of Right-of-Way between property owners and the street curb. Persons planting or maintaining plantings or gardens shall not be deemed to use or occupy the Right-of-Way, and shall not be required to obtain any Permits or satisfy any other requirements for planting or maintaining such plantings or gardens under this chapter.

141.05 RIGHT TO OCCUPY RIGHTS-OF-WAY; PAYMENT OF FEES.

1. Any Person required to register under Section 141.04, which occupies, uses, or places its Equipment in the Right-of-Way, is hereby granted a right to do so if and only so long as it (a) timely pays all fees provided herein; and (b) complies with all other requirements of law.

2. The grant of right in Section 141.05.01 is expressly conditioned on, and is subject to, the police powers of the City, continuing compliance with all provisions of law now or hereinafter enacted, including this chapter as it may be from time to time amended and, further, is specifically subject to the obligation to obtain any and all additional required authorizations, whether from the City or other body or authority.

141.06 FRANCHISE; FRANCHISE SUPREMACY. The City may, in addition to the requirements of this chapter, require any Person which has or seeks to have Equipment located in any Right-of-Way to obtain a franchise to the full extent permitted by law, now or hereinafter enacted. The terms of any franchise which are in direct conflict with any provision of this chapter, whether granted prior or subsequent to enactment to this chapter, shall control and supersede the conflicting terms of this chapter provided, however, that requirements relating to insurance, bonds, penalties, security funds, letters of credit, indemnification or any other security in favor of the City may be cumulative in the sole determination of the City or unless otherwise negotiated by the City and the franchise grantee. All other terms of this chapter shall be fully applicable to all Persons.
CHAPTER 141

RIGHT-OF-WAY MANAGEMENT

141.07 REGISTRATION INFORMATION.

1. The information provided to the City at the time of registration shall include, but not be limited to:

   A. The Registrant’s name, address and e-mail address if applicable, and telephone and facsimile numbers.

   B. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a Local Representative. The Local Representative or designee shall be available at all times. Current information regarding how to contact the Local Representative in an Emergency shall be provided at the time of registration.

   C. A certificate of insurance or self-insurance:

      (1) Shall be on a form approved by the City,

      (2) Shall verify that an insurance policy has been issued to the Registrant by an insurance company licensed to do business in the State of Iowa or is covered by self-insurance which the City determines to provide the City with protections equivalent to that of an Iowa licensed insurance company, legally independent from Registrant,

      (3) Shall verify that the Registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (a) use and occupancy of the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, and (b) placement and use of Equipment in the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Equipment and collapse of property,

      (4) Shall name the City as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages,

      (5) Shall require that the City be notified thirty (30) days in advance of cancellation of the policy, and

      (6) Shall indicate comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage in amounts established by the City in amounts sufficient to protect the City and carry out the purposes and policies of this chapter.

   D. Such other information as the City may require.

2. The Registrant shall keep all of the information listed above current at all times by providing the City information of changes within fifteen (15) days following the date on which the Registrant has knowledge of any change.

141.08 REPORTING OBLIGATIONS.

1. Operations. Each Registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan with the City. Registrants must use commercially reasonable efforts to anticipate and plan for all upcoming projects and include all such projects in a construction or major maintenance plan. Such plan shall be submitted using a format designated by the City.
and shall contain the information determined by the City to be necessary to facilitate the coordination and reduction in the frequency of Excavations and Obstructions of Rights-of-Way.

A. The plan shall include, but not be limited to, the following information:

1. The specific locations and the estimated beginning and ending dates of all Projects to be commenced during the next calendar year (in this section, a “Next-year Project”); and

2. The tentative locations and beginning and ending dates for all Projects contemplated for the five years following the next calendar year (in this section, a “Five-year Project”).

The term “Project” in this section shall include both Next-year Projects and Five-year Projects.

- By January 1 of each year the City will have available for inspection its offices a composite list of all Projects of which it has been informed in the annual plans. All Registrants are responsible for keeping themselves apprised of the current status of this list.

- Thereafter, by February 1, each Registrant may change any Project in its list of Next-year Projects, and must notify the City and all other Registrants of all such changes in said list. Notwithstanding the foregoing, a Registrant may at any time join in a Next-year Project of another Registrant that was listed by the other Registrant.

2. Additional Next-year Projects. Notwithstanding the foregoing, the City may, for good cause shown, allow a Registrant to submit additional Next-year Projects. Good cause includes, but is not limited to, the criteria set forth in Section 140.17(03) concerning the discretionary issuance of Permits.

141.09 PERMIT REQUIREMENT. Except as otherwise provided in this Code, no Person may Obstruct or Excavate any Right-of-Way without first having obtained the appropriate Right-of-Way Permit from the City to do so.

1. Excavation Permit. An Excavation Permit is required to allow the holder to Excavate that part of the Right-of-Way described in such Permit and/or to hinder free and open passage over the specified portion of the Right-of-Way by placing Equipment described therein, to the extent and for the duration specified therein.

2. Obstruction Permit. An Obstruction Permit is required to allow the holder to hinder free and open passage over the specified portion of Right-of-Way by placing Equipment, vehicles, or other obstructions described therein on the Right-of-Way for the duration specified therein.

No Person may Excavate or Obstruct the Right-of-Way beyond the date or dates specified in the Permit unless such person (a) makes a Supplementary Application for another Right-of-Way Permit before the expiration of the initial Permit, and (b) a new Permit or Permit extension is granted.

Permits issued under this chapter shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the City Inspector and authorized City personnel.
CHAPTER 141  RIGHT-OF-WAY MANAGEMENT

141.10 PERMIT APPLICATIONS.

1. Application for a Permit is made to the City. Right-of-way Permit applications shall contain, and will be considered complete only upon compliance with, the requirements of the following provisions:
   A. Registration with the City pursuant to this chapter.
   B. Submission of a completed Permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed Equipment.
   C. Payment of all money due to the City for:
      (1) Permit fees and costs due;
      (2) Prior Obstructions and Excavations;
      (3) Any loss, damage, or expense suffered by the City as a result of Applicant’s prior Excavations or Obstructions of the Rights-of-Way or any Emergency actions taken by the City; and
      (4) Franchise fees, if applicable.

2. When an Excavation Permit is requested for purposes of installing additional Equipment, and a Performance and Restoration Bond which is in existence is insufficient with respect to the additional Equipment in the sole determination of the City, the Permit applicant may be required by the City to post an additional Performance and Restoration Bond in accordance with Section 140.04.01.

141.11 ISSUANCE OF PERMIT; CONDITIONS.

1. If the City determines that the Applicant has satisfied the requirements of this chapter, the City may issue a Permit.

2. The City may impose any reasonable conditions upon the issuance of a Permit and the performance of the applicant thereunder in order to protect the public health, safety and welfare, to ensure the structural integrity of the Right-of-Way, to protect the property and safety of other users of the Right-of-Way, to minimize the disruption and inconvenience to the traveling public, and to otherwise efficiently manage use of the Right-of-Way.

141.12 PERMIT FEES.

1. Excavation Permit Fee. The Excavation Permit Fee shall be established by the City in an amount sufficient to recover the following costs:
   A. The City Cost;
   B. The Degradation of the Right-of-Way that will result from the Excavation;
   C. Restoration, if done or caused to be done by the City.

2. Obstruction Permit Fee. The Obstruction Permit Fee shall be established by the City and shall be in an amount sufficient to recover the City Cost.

3. Disruption Fees. The City may establish and impose a disruption fee as a penalty for unreasonable delays in Excavations, Obstructions, or Restoration.
4. Payment of Permit Fees. No Excavation Permit or Obstruction Permit shall be issued without payment of all fees required prior to the issuance of such a Permit unless the Applicant shall agree (in a manner, amount and substance acceptable to the City) to pay such fees within thirty (30) days of bill therefore. All Permit fees shall be doubled during a probationary period. Permit fees that were paid for a Permit which was revoked for a breach are not refundable. Any refunded Permit Fees shall be less all City Cost up to and including the date of refund.

5. Use of Permit Fees. All Obstruction and Excavation Permit Fees shall be used solely for City management, construction, maintenance and Restorations costs of the Right-of-Way.

141.13 RIGHT-OF-WAY RESTORATION.

1. The work to be done under the Permit, and the Restoration of the Right-of-Way as required herein, must be completed within the dates specified in the Permit, increased by as many days as work count not be done because of circumstances constituting force majeure or when work was prohibited as unseasonal or unreasonable under Section 140.16.02 all in the sole determination of the City.

In addition to repairing its own work, the Permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition thereafter.

2. In its application for an Excavation Permit, the Permittee may choose to have the City restore the Right-of-Way. In any event, the City may determine to perform the Right-of-Way Restoration and shall require the Permittee to a Restoration Fee to provide for reimbursement of all costs associated with such Restoration. In the event Permittee elects not to perform Restoration, City may, in lieu of performing the Restoration itself, impose a fee to fully compensate for the resultant Degradation as well as for any and all additional City Costs associated therewith. Such fee for Degradation shall compensate the City for costs associated with a decrease in the useful life of the Right-of-Way caused by Excavation and shall include a Restoration Fee component. Payment of such fee does not relieve a Permittee from any Restoration obligation.

A. City Restoration. If the City restores a Right-of-Way, the Permittee shall pay the costs thereof within thirty (30) days of billing. If, during the thirty-six (36) months following such Restoration, the Right-of-Way settles due to Permittee’s Excavation or Restoration, the Permittee shall pay the City, within thirty (30) days of billing, the cost or repairing said Right-of-Way.

B. Permittee Restoration. If the Permittee chooses at the time of application for an Excavation Permit to restore the Right-of-Way itself, such Permittee shall post an additional Performance and Restoration Bond in an amount determined by the City to be sufficient to cover the cost of restoring the Right-of-Way to its pre-Excavation condition. If, thirty-six (36) months after the completion of the Restoration of the Right-of-Way, the City determines that the Right-of-Way has been properly restored, the surety on the Performance and Restoration Bond posted pursuant to this 140.13.02.B shall be released.
3. The Permittee shall perform the work according to the standards and with materials specified by the City. The City shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures or general application or on a case-by-case basis. The City, in exercising this authority, shall be guided but not limited by the following standards and considerations:

   A. The number, size, depth and duration of the Excavations, disruptions or damage to the Right-of-Way;
   B. The traffic volume carried by the Right-of-Way; the character of the neighborhood surrounding the Right-of-Way;
   C. The pre-excavation condition of the Right-of-Way; the remaining life-expectancy of the Right-of-Way affected by the Excavation;
   D. Whether the relative cost of the method of Restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the Right-of-Way that would otherwise result from the Excavation, disturbance or damage to the Right-of-Way; and
   E. The likelihood that the particular method of Restoration would be effective in slowing the depreciation of the Right-of-Way that would otherwise take place.

4. By choosing to restore the Right-of-Way itself, the Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this thirty-six month period it shall, upon notification from the City, correct all Restoration work to the extent necessary, using the method required by the City. Said work shall be completed within five (5) calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Section 141.16.02 all in the sole determination of the City.

5. If the Permittee fails to restore the Right-of-Way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all repairs required by the City, the City at its option may perform or cause to be performed such work. In that event the Permittee shall pay to the City, within thirty (30) days of billing, the cost of restoring the Right-of-Way. If Permittee fails to pay as required, the City may exercise its rights under the Performance and Restoration Bond.

141.14 JOINT APPLICATIONS.

1. Registrants may jointly make applications for Permits to Excavate or Obstruct the Right-of-Way at the same place and time.

2. Registrants who join in and during a scheduled Obstruction or Excavation performed by the City, whether or not it as a joint application by two or more Registrants or a single application, are not required to pay the Obstruction and Degradation portions of the Permit Fee.

3. Registrants who apply for Permits for the same Obstruction or Excavation, which is not performed by the City, may share in the payment of the Obstruction or Excavation Permit Fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.
141.15 SUPPLEMENTARY APPLICATIONS.

1. A Right-of-Way Permit is valid only for the area of the Right-of-Way specified in the Permit. No Permittee may perform any work outside the area specified in the Permit, except as provided herein. Any Permittee which determines that an area greater than that specified in the Permit must be Obstructed or Excavated must before working in that greater area (a) make application for a Permit extension and pay any additional fees necessitated thereby, and (b) be granted a new Permit or Permit extension.

2. A Right-of-Way Permit is valid only for the dates specified in the Permit. No Permittee may begin its work before the Permit start date or, except as provided herein, continue working after the end date. If a Permittee does not finish the work by the Permit end date, it must make application for a new Permit for the additional time it needs, and receive the new Permit or an extension of the old Permit before working after the end date of the previous Permit. This Supplementary Application must be done before the Permit end date.

141.16 OTHER OBLIGATIONS.

1. Obtaining a Right-of-Way Permit does not relieve Permittee of its duty to obtain all other necessary Permits, licenses, franchises or other authorizations and to pay all fees required by the City, any other city, County, State, or Federal rules, laws, or regulations. A Permittee shall comply with all requirements of local, state and federal laws. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the Right-of-Way pursuant to its Permit, regardless of who performs the work.

2. Except in the case of an Emergency, and with the approval of the City, no Right-of-Way Obstruction or Excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

3. A Permittee shall not so Obstruct a Right-of-Way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with.

141.17 DENIAL OF PERMIT. The City may, deny any application for a Permit as provided in this section.

1. Mandatory Denial. Except in the case of an Emergency, no Right-of-Way Permit will be granted.

   A. To any Person required by Section 141.04 to be registered who has not done so;

   B. To any Person required by Section 141.08 to file an annual report but has failed to do so;

   C. For any Next-year Project not listed in the construction and major maintenance plan required under Section 141.08 unless the Person used commercially reasonable efforts to anticipate and plan for the project;

   D. For any project which required the Excavation of any portion of a Right-of-Way which was constructed or reconstructed within the preceding three (3) years;
E. To any Person who has failed within the past three (3) years to comply, or is presently not in full compliance, with the requirements of this chapter;

F. To any Person as to who there exists grounds for the revocation of a Permit under Section 141.22; and

G. If, in the sole discretion of the City, the issuance of a Permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The City, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the Right-of-Way, and by considerations relating to the public health, safety and welfare.

2. Permissive Denial. The City may deny a Permit in order to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way, or when necessary to protect the Right-of-Way and its users. The City may consider one or more of the following factors:

A. The extent to which Right-of-Way space where the Permit is sought is available;

B. The competing demands for the particular space to the Right-of-Way;

C. The availability of other locations in the Right-of-Way or in other Rights-of-Way for the Equipment of the Permit Applicant;

D. The applicability of ordinance or other regulations of the Right-of-Way that affect location of Equipment in the Right-of-Way;

E. The degree of compliance of the Applicant with the terms and conditions of its franchise, if any, this chapter, and other applicable ordinances and regulations;

F. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the Right-of-Way;

G. The condition and age of the Right-of-Way, and whether and when it is scheduled for total or partial reconstruction; and

H. The balancing of the costs of disruption to the public and damage to the Right-of-Way, against the benefits to that part of the public served by the expansion into additional parts of the Right-of-Way.

3. Discretionary Issuance. Notwithstanding the provisions of Section 141.18.01.C and D above, the City may issue a Permit in any case where the Permit is necessary (a) to prevent substantial economic hardship to a customer of the Permit Applicant, of (b) to allow such customer to materially improve its Utility Service, or (c) to allow a new economic development project; and where the Permit Applicant did not have knowledge of the hardship, the plans for improvement of Service, or the development project when said Applicant was required to submit its list of Next-year Projects.

4. Permits for Additional Next-year Projects. Notwithstanding the provisions of Section 141.18.01.C above, the City may issue a Permit to a Registrant who was allowed under Section 141.08.02 to submit an additional Next-year Project, or in the event the Registrant demonstrates that it used commercially reasonable efforts to anticipate and plan for the project, such Permit to be subject to all other conditions.
and requirements of law, including such conditions as may be imposed under Section 141.11.02.

141.18 INSTALLATION REQUIREMENTS. The City may enforce local standards of installation prior to adoption of mandatory, preemptive statewide standards pursuant to its inherent and historical police power authority.

141.19 INSPECTION.

1. When the work under any Permit hereunder is completed, the Permittee shall notify the City.

2. Permittee shall make the work-site available to the City Inspector and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the work.

3. At the time of inspection the City Inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public. The City Inspection may issue an order to the Registrant for any work which does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the Permit. Within ten (10) days after issuance of the order, the Registrant shall present proof to the City that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the Permit pursuant to Section 141.22.

141.20 WORK DONE WITHOUT A PERMIT.

1. Emergency Situations. Each Registrant shall immediately notify the City or the City’s designee of any event regarding its Equipment which it considers to be an Emergency. The Registrant may proceed to take whatever actions are necessary in order to respond to the Emergency. Within three (3) business days after the occurrence of the Emergency, the Registrant shall apply for the necessary Permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the Emergency.

In the event that the City becomes aware of an Emergency regarding a Registrant’s Equipment, the City may attempt to contact the Local Representative of each Registrant affected, or potentially affected, by the Emergency. In any event, the City may take whatever action it deems necessary in order to respond to the Emergency, the cost of which shall be borne by the Registrant whose Equipment occasioned the Emergency.

2. Non-Emergency Situations. Except in the case of an Emergency, any Person who, without first having obtained the necessary Permit, Obstructs or Excavates a Right-of-Way must subsequently obtain a Permit, pay double the normal fee for said Permit, pay double all other fees required by City ordinance, including, but not limited to, criminal fines and penalties, deposit with the City the fees necessary to correct any damage to the Right-of-Way and comply with all of the requirements of this chapter.

141.21 SUPPLEMENTARY NOTIFICATION. If the Obstruction or Excavation of the Right-of-Way begins later or sooner than the date given on the Permit, Permittee shall notify the City of the accurate information as soon as this information is known.
141.22 REVOCATION OF PERMITS.

1. Registrants hold Permits issued pursuant to this Code as a privilege and not as a right. The City reserves its right, to revoke any Right-of-Way Permit, without fee refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any condition of the Permit. A substantial breach by Permittee shall include, but not be limited to, the following:

   A. The violation of any material provision of the Right-of-Way Permit;
   B. An evasion or attempt to evade any material provision of the Right-of-Way Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
   C. Any material misrepresentation of fact in the application for a Right-of-Way Permit;
   D. The failure to maintain the required bonds and/or insurance;
   E. The failure to complete the work in a timely manner; or
   F. The failure to correct a condition indicated on an order issued pursuant to Section 140.19.03.

2. If the City determines that the Permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the Permit, the City shall make a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the Permit. Further, a substantial breach, as stated above, will allow the City, at the City’s discretion, to place additional or revised conditions on the Permit.

3. Within twenty-four (24) hours of receiving notification of the breach, Permittee shall contact the City with a plan, acceptable to the City Inspector, for its correction. Permittee’s failure to so contact the City Inspector, the Permittee’s failure to submit an acceptable plan, or the Permittee’s failure to reasonably implement the approved plan shall be cause for immediate revocation of the Permit. Further, Permittee’s failure to so contact the City Inspector, or the Permittee’s failure to submit an acceptable plan, or Permittee’s failure to reasonably implement the approved plan shall automatically place the Permittee on Probation for one (1) full year.

4. From time to time, the City may establish a list of conditions of the Permit which, if breached, will automatically place the Permittee on Probation for one (1) full year, such as, but not limited to, working out of the allotted time period or working on Right-of-Way outside of the Permit.

5. If a Permittee, while on Probation, commits a breach as outlined above, Permittee’s Permit will automatically be revoked and Permittee will not be allowed further Permits for one (1) full year, except for Emergency repairs.

6. If a Permit is revoked, the Permittee shall also reimburse the City for the City’s reasonable costs, including Restoration costs and the costs of collection and reasonable attorney’s fees incurred in connection with such revocation.

141.23 APPEALS.

1. A Person that:
   A. Has been denied Registration;
B. Has been denied a Right-of-Way Permit;
C. Has had its Right-of-Way Permit revoked; or
D. Believes that the fees imposed on the user by the City do not conform to the requirements of law.

may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

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

3. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

141.24 MAPPING DATA.

1. Except as provided in subsection 2 of this section, each Registrant shall provide to the City information indicating the horizontal and vertical location, relative to the boundaries of the Right-of-Way, of all Equipment which it owns or over which it has control and which is located in any Right-of-Way ("Mapping Data"). Mapping Data shall be provided with the specificity and in the format requested by the City for inclusion in the mapping system used by the City.

Within six months of the acquisitions, installation, or construction of additional Equipment or any relocation, abandonment, or disuse of existing Equipment, each Registrant shall supplement the Mapping Data required herein.

Each Registrant shall, within six (6) months after the date of passage of the ordinance codified in this chapter, submit a plan to the City specifying in detail the steps it will take to comply with the requirements of this section. Said plan shall provide for the submission of all Mapping Data not later than five (5) years after the date of passage of the ordinance codified in this chapter.†

Notwithstanding the foregoing, Mapping Data shall be submitted by all Registrants for all Equipment which is being installed or constructed after the date of passage of this ordinance at the time any Permits are sought under this chapter.

† EDITOR’S NOTE: Ordinance No. 16-2012 adopting right-of-way management provisions for the City was passed and adopted on October 13, 2012.
CHAPTER 141

RIGHT-OF-WAY MANAGEMENT

After six (6) months after the passage of the ordinance codified in this chapter, a new Registrant, or a Registrant which has not submitted a plan as required above, shall submit complete and accurate Mapping Data for all its Equipment at the time any Permits are sought under this chapter.

2. Information regarding Equipment of Telecommunications Right-of-Way Users constructed or located prior to January 1, 1997, need only be supplied in the form maintained, however, all Telecommunications Right-of-Way Users must submit some type of documentary evidence regarding the location of Equipment within the Rights-of-Way of the City.

3. At the request of any Registrant, any information requested by the City, which qualifies as a “trade secret” shall be treated as trade secret information as detailed therein.

141.25 LOCATION OF EQUIPMENT.

1. Undergrounding. Unless otherwise permitted by an existing franchise or unless existing above-ground Equipment is repaired or replaced, or unless infeasible such as in the provision of electric service at certain voltages, new construction, the installation of new Equipment, and the replacement of old Equipment shall be done underground or contained within buildings or other structures in conformity with applicable codes unless otherwise agreed to by the City in writing, and such agreement is reflected in applicable Permits.

2. Corridors. The City may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, for each type of Equipment that is or, pursuant to current technology, the City expects will someday be located within the Right-of-Way. Excavation, Obstruction, or other Permits issued by the City involving the installation or replacement of Equipment may designate the proper corridor for the Equipment at issue and such Equipment must be located accordingly.

Any Registrant whose Equipment is located prior to the enactment of this chapter in the Right-of-Way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or Excavation of the area where its Equipment is located, move that Equipment to its assigned position within the Right-of-Way, unless this requirement is waived by the City for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the Registrant.

3. Nuisance. One year after the passage of the ordinance codified in this chapter, any Equipment found in a Right-of-Way that has not been registered shall be deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the Equipment and restoring the Right-of-Way to a useable condition.

4. Limitation of Space. To protect health, safety and welfare, the City shall have the power to prohibit or limit the placement or new or additional Equipment within the Right-of-Way if there is insufficient space to accommodate all of the requests of Registrants or Persons to occupy and use the Right-of-Way. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by considerations of the public interest, the public’s needs for the particular Service, the condition of the Right-of-Way, the time of year with respect to essential utilities, the protection of
existing Equipment in the Right-of-Way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

141.26 RELOCATION OF EQUIPMENT. The Person must promptly and at its own expense, with due regard to seasonal working conditions, permanently remove and relocate its Equipment and facilities in the Right-of-Way whenever the City requests such removal and relocation, and shall restore the Right-of-Way to the same condition it was in prior to said removal or relocation. The City may make such requests in order to prevent interference by the Company’s Equipment or facilities with (a) a present or future City use of the Right-of-Way, (b) a public improvement undertaken by the City, (c) and economic development project in which the City has an interest or investment, (d) when the public health, safety and welfare requires is, (e) or when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way.

Notwithstanding the foregoing, a Person shall not be required to remove or relocate its Equipment from any Right-of-Way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid by such non-governmental entity to the Person therefor.

141.27 PRE-EXCAVATION EQUIPMENT LOCATION. Before the start date of any Right-of-Way Excavation, each Registrant who has Equipment located in the area to be Excavated shall mark the horizontal and approximate vertical placement of all said Equipment. Any Registrant whose Equipment is less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the Excavation contractor in an effort to establish the exact location of its Equipment and the best procedure for Excavation.

140.28 DAMAGE TO OTHER EQUIPMENT. When the City performs work in the Right-of-Way and finds it necessary to maintain, support, or move a Registrant’s Equipment in order to protect it, the City shall notify the Local Representative as early as is reasonably possible. The costs associated therewith will be billed to that Registrant and must be paid within thirty (30) days from the date of billing.

Each Registrant shall be responsible for the cost of repairing any Equipment in the Right-of-Way which it or its Equipment damages. Each Registrant shall be responsible for the cost of repairing any damage to the Equipment of another Registrant caused during the City’s response to an Emergency occasioned by the Registrant’s Equipment.

141.29 RIGHT-OF-WAY VACATION.

1. If the City vacates a Right-of-Way which contains the equipment of a Registrant, and if the vacation does not required the relocation of Registrant or Permittee Equipment, the City shall reserve, to and for itself and all Registrants having equipment in the vacated Right-of-Way, the right to install, maintain and operate any Equipment in the vacated Right-of-Way and to enter upon such Right-of-Way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

2. If the vacation requires the relocation of Registrant or Permittee Equipment and: (a) if the vacation proceedings are initiated by the Registrant or Permittee, the Registrant or Permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the Registrant or Permittee must pay the
relocation costs unless otherwise agreed to by the City and the Registrant or Permittee; or (c) if the vacation proceedings are initiated by a Person or Persons other than the Registrant or Permittee, such other Person or Persons must pay the relocation costs.

141.30 INDEMNIFICATION AND LIABILITY.

1. By reason of the acceptance of a registration or the grant of a Right-of-Way Permit, the City does not assume any liability: (a) for injuries to Persons, damage to property, or loss of Service claims by parties other than the Registrant or the City; or (b) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Equipment by Registrants or activities of Registrants.

2. By registering with the City, a Registrant agrees, or by accepting a Permit under this chapter, a Permittee is required to defend, indemnify, and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its Equipment, or out of any activity undertaken in or near a Right-of-Way, whether or not any act or omission complained of is authorized, allowed, or prohibited by a Right-of-Way Permit. It further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City for any claim nor for any award arising out of the presence, installation, maintenance or operation of its Equipment, or any activity undertaken in or near a Right-of-Way, whether or not the act or omission complained of is authorized, allowed or prohibited by a Right-of-Way Permit. The foregoing does not indemnify the City for its own negligence except for claims arising out or alleging the City’s negligence where such negligence arises out of or is primarily related to the presence, installation, construction, operation, maintenance or repair of said Equipment by the Registrant or on the Registrant’s behalf, including, but not limited to, the issuance of Permits and inspection of plans or work. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Registrant or to the City; and the Registrant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert on its own behalf.

141.31 FUTURE USES. In placing any Equipment, or allowing it to be placed, in the Right-of-Way the City is not liable for any damages caused thereby to any Registrant’s Equipment which is already in place. No Registrant is entitled to rely on the provisions of this chapter, and no special duty is created as to any Registrant. This chapter is enacted to protect the general health, welfare and safety of the public at large.

141.32 ABANDONED AND UNUSABLE EQUIPMENT.

1. A Registrant who has determined to discontinue its operations with respect to any Equipment in any Right-of-Way, or segment or portion thereof, in the City must either:

   A. Provide information satisfactory to the City that the Registrant’s obligations for its Equipment in the Right-of-Way under this Chapter have been lawfully assumed by another Registrant; or
B. Submit to the City a proposal and instruments for transferring ownership of its Equipment to the City. If a Registrant proceeds under this clause, the City may, at its option:

1. Purchase the Equipment, or
2. Require the Registrant, at its own expense, to remove it, or
3. Require the Registrant to post an additional bond or an increased bond amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Equipment.

2. Equipment of a Registrant which fails to comply with the preceding paragraph and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned Equipment is deemed to be a nuisance. The City may exercise any remedies of rights it has at law or in equity, including, but not limited to, (a) abating the nuisance, (b) taking possession of the Equipment and restoring it to useable condition, (c) requiring removal of the Equipment by the Registrant or by the Registrant’s surety; or (d) exercising its rights pursuant to the Performance and Restoration Bond.

3. Any Registrant who has unusable Equipment in any Right-of-Way shall remove it from that Right-of-Way during the next scheduled Excavation, unless this requirement is waived by the City.

141.33 RESERVATION OF REGULATORY AND POLICE POWERS. The City by granting a Right-of-Way Permit, or by registering a Person under this chapter does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it now has or may be hereafter vested in the City under the Constitution and statutes of the State of Iowa (or the Charter of the City) to regulate the use of the Right-of-Way by the Permittee; and the Permittee by its acceptance of a Right-of-Way Permit or of registration under those ordinances agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Permittee or Registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of a registration or of a Right-of-Way Permit and any other present or future lawful exercise of the City’s regulatory or police powers shall be resolved in favor of the latter.

141.34 NON-EXCLUSIVE REMEDY. The remedies provided in this chapter and other chapters in the Garnavillo City Code of Ordinances, and the Code of Iowa, are not exclusive or in lieu of other rights and remedies that the City may have at law or in equity. The City is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public Rights-of-Way, including damages to the Rights-of-Way, whether or not caused by a violation of any of the provisions of this chapter or other provisions of the Iowa Code.

(Ch. 141 – Ord. 16-2012 – Nov. 14 Supp.)
CHAPTER 145
DANGEROUS BUILDINGS

145.01 ENFORCEMENT OFFICER. The Mayor is responsible for the enforcement of this chapter.

145.02 GENERAL DEFINITION OF UNSAFE. All buildings or structures which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, are, for the purpose of this chapter, unsafe buildings. All such unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedure specified in this chapter.

(Code of Iowa, Sec. 657A.1 & 364.12[3a])

145.03 UNSAFE BUILDING. “Unsafe building” means any structure or mobile home meeting any or all of the following criteria:

1. Various Inadequacies. Whenever the building or structure, or any portion thereof, because of (a) dilapidation, deterioration, or decay; (b) faulty construction; (c) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (d) the deterioration, decay or inadequacy of its foundation; or (e) any other cause, is likely to partially or completely collapse.

2. Manifestly Unsafe. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

3. Inadequate Maintenance. Whenever a building or structure, used or intended to be used for dwelling purposes, because of dilapidation, decay, damage, faulty construction, or otherwise, is determined by any health officer to be unsanitary, unfit for human habitation or in such condition that it is likely to cause sickness or disease.

4. Fire Hazard. Whenever any building or structure, because of dilapidated condition, deterioration, damage, or other cause, is determined by the Fire Marshal or Fire Chief to be a fire hazard.

5. Abandoned. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

145.04 NOTICE TO OWNER. The enforcement officer shall examine or cause to be examined every building or structure or portion thereof reported as dangerous or damaged and, if such is found to be an unsafe building as defined in this chapter, the enforcement

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officer shall give to the owner of such building or structure written notice stating the defects thereof. This notice may require the owner or person in charge of the building or premises, within forty-eight (48) hours or such reasonable time as the circumstances require, to commence either the required repairs or improvements or demolition and removal of the building or structure or portions thereof, and all such work shall be completed within ninety (90) days from date of notice, unless otherwise stipulated by the enforcement officer. If necessary, such notice shall also require the building, structure, or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected and approved by the enforcement officer.

(Code of Iowa, Sec. 364.12 [3h])

1. Notice Served. Such notice shall be served by sending by certified mail to the owner of record, according to Section 364.12[3h] of the Code of Iowa, if the owner is found within the City limits. If the owner is not found within the City limits such service may be made upon the owner by registered mail or certified mail. The designated period within which said owner or person in charge is required to comply with the order of the enforcement officer shall begin as of the date the owner receives such notice.

2. Hearing. Such notice shall also advise the owner that he or she may request a hearing before the Council on the notice by filing a written request for hearing within the time provided in the notice.

145.05 CONDUCT OF HEARING. If requested, the Council shall conduct a hearing in accordance with the following:

1. Notice. The owner shall be served with written notice specifying the date, time and place of hearing.

2. Owner’s Rights. At the hearing, the owner may appear and show cause why the alleged nuisance shall not be abated.

3. Determination. The Council shall make and record findings of fact and may issue such order as it deems appropriate.

145.06 POSTING OF SIGNS. The enforcement officer shall cause to be posted at each entrance to such building a notice to read: “DO NOT ENTER. UNSAFE TO OCCUPY. CITY OF GARNAVILLO, IOWA.” Such notice shall remain posted until the required repairs, demolition, or removal are completed. Such notice shall not be removed without written permission of the enforcement officer and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.

145.07 RIGHT TO DEMOLISH; MUNICIPAL INFRACTION. In case the owner fails, neglects, or refuses to comply with the notice to repair, rehabilitate, or to demolish and remove the building or structure or portion thereof, the Council may order the owner of the building prosecuted as a violator of the provisions of this chapter and may order the enforcement officer to proceed with the work specified in such notice. A statement of the cost of such work shall be transmitted to the Council. As an alternative to this action, the City may utilize the municipal infraction process to abate the nuisance.

(Code of Iowa, Sec. 364.12[3h])

145.08 COSTS. Costs incurred under Section 145.07 shall be paid out of the City treasury. Such costs shall be charged to the owner of the premises involved and levied as a special assessment against the land on which the building or structure is located, and shall be certified
to the County Treasurer for collection in the manner provided for other taxes. In addition, the City may take any other action deemed appropriate to recover costs incurred.

(Code of Iowa, Sec. 364.12[3h])

**EDITOR’S NOTE**

Suggested forms of notice and of a resolution and order of the Council for the administration of this chapter are provided in the APPENDIX of this Code of Ordinances.

Caution is urged in the use of this procedure. We recommend you review the situation with your attorney before initiating procedures and follow his or her recommendation carefully.
CHAPTER 150
BUILDING NUMBERING

150.01  DEFINITIONS.  For use in this chapter, the following terms are defined:

1. “Owner” means the owner of the principal building.

2. “Principal building” means the main building on any lot or subdivision thereof.

150.02  OWNER REQUIREMENTS.  Every owner shall comply with the following numbering requirements:

1. Obtain Building Number.  The owner shall obtain the assigned number to the principal building from the Clerk.
   (Code of Iowa, Sec. 364.12[3d])

2. Display Building Number.  The owner shall place or cause to be installed and maintained on the principal building the assigned number in a conspicuous place to the street in figures not less than two and one-half (2½) inches in height and of a contrasting color with their background.
   (Code of Iowa, Sec. 364.12[3d])

3. Failure to Comply.  If an owner refuses to number a building as herein provided, or fails to do so for a period of thirty (30) days after being notified in writing by the City to do so, the City may proceed to place the assigned number on the principal building and assess the costs against the property for collection in the same manner as a property tax.
   (Code of Iowa, Sec. 364.12[3h])

150.03  BUILDING NUMBERING MAP.  The Clerk shall be responsible for preparing and maintaining a building numbering map.
CHAPTER 151

TREES

151.01 Definition. For use in this chapter, “parking” means that part of the street, avenue or highway in the City not covered by sidewalk and lying between the lot line and the curb line; or, on unpaved streets, that part of the street, avenue or highway lying between the lot line and that portion of the street usually traveled by vehicular traffic.

151.02 Planting Restrictions. No tree shall be planted in any parking or street.

151.03 Duty to Trim Trees. The owner or agent of the abutting property shall keep the trees on, or overhanging the street, trimmed so that all branches will be at least fifteen (15) feet above the surface of the street and eight (8) feet above the sidewalks. If the abutting property owner fails to trim the trees, the City may serve notice on the abutting property owner requiring that such action be taken within five (5) days. If such action is not taken within that time, the City may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12[2c, d & e])

151.04 Trimming Trees to be Supervised. Except as allowed in Section 151.03, it is unlawful for any person to trim or cut any tree in a street or public place unless the work is done under the supervision of the City.

151.05 Disease Control. Any dead, diseased or damaged tree or shrub which may harbor serious insect or disease pests or disease injurious to other trees is hereby declared to be a nuisance.

151.06 Inspection and Removal. The Council shall inspect or cause to be inspected any trees or shrubs in the City reported or suspected to be dead, diseased or damaged, and such trees and shrubs shall be subject to the following:

1. City Property. If it is determined that any such condition exists on any public property, including the strip between the curb and the lot line of private property, the Council may cause such condition to be corrected by treatment or removal. The Council may also order the removal of any trees on the streets of the City which interfere with the making of improvements or with travel thereon.

2. Private Property. If it is determined with reasonable certainty that any such condition exists on private property and that danger to other trees or to adjoining property or passing motorists or pedestrians is imminent, the Council shall notify by certified mail the owner, occupant or person in charge of such property to correct such condition by treatment or removal within fourteen (14) days of said notification. If such owner, occupant, or person in charge of said property fails to comply within
fourteen (14) days of receipt of notice, the Council may cause the condition to be corrected and the cost assessed against the property.

(Code of Iowa, Sec. 364.12[3b & h])
# CHAPTER 160

## FLOOD PLAIN MANAGEMENT

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### 160.01  STATUTORY AUTHORITY, FINDINGS OF FACT AND PURPOSE.

1. The Legislature of the State of Iowa has in Chapter 414, Code of Iowa, as amended, delegated the power to cities to enact zoning regulations to secure safety from flood and to promote health and the general welfare.

2. Findings of Fact.
   
   A. The flood hazard areas of the City of Garnavillo are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare of the community.

   B. These flood losses, hazards, and related adverse effects are caused by: (i) The occupancy of flood hazard areas by uses vulnerable to flood damages which create hazardous conditions as a result of being inadequately elevated or otherwise protected from flooding and (ii) the cumulative effect of obstructions on the flood plain causing increases in flood heights and velocities.

   C. This chapter relies upon engineering methodology for analyzing flood hazards which is consistent with the standards established by the Department of Natural Resources.

3. Statement of Purpose. It is the purpose of this chapter to protect and preserve the rights, privileges and property of the City of Garnavillo and its residents and to preserve and improve the peace, safety, health, welfare, and comfort and convenience of its residents by minimizing those flood losses described in Section 160.01(2)(A) of this chapter with provisions designed to:

   A. Reserve sufficient flood plain area for the conveyance of flood flows so that flood heights and velocities will not be increased substantially.

   B. Restrict or prohibit uses which are dangerous to health, safety or property in times of flood or which cause excessive increases in flood heights or velocities.

   C. Require that uses vulnerable to floods, including public facilities which serve such uses, be protected against flood damage at the time of initial construction or substantial improvement.

   D. Protect individuals from buying lands which may not be suited for intended purposes because of flood hazard.

   E. Assure that eligibility is maintained for property owners in the community to purchase flood insurance through the National Flood Insurance Program.
CHAPTER 160  FLOOD PLAIN MANAGEMENT

160.02 GENERAL PROVISIONS.

1. Lands to Which Chapter Apply. The provisions of this chapter shall apply to all lands within the jurisdiction of the City of Garnavillo which are located within the boundaries of the Flood Plain (Overlay) District, as established in Section 160.03.

2. Rules for Interpretation of District Boundaries. The boundaries of the zoning district areas shall be determined by scaling distances on the Official Flood Plain Zoning Map. When an interpretation is needed as to the exact location of a boundary, the Zoning Administrator shall make the necessary interpretation. The Zoning Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Zoning Administrator in the enforcement or administration of this chapter.

3. Compliance. No structure or land shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulations which apply to uses within the jurisdiction of this chapter.

4. Abrogation and Greater Restrictions. It is not intended by this chapter to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provision of this chapter shall prevail. All other ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only.

5. Interpretation. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State statutes.

6. Warning and Disclaimer of Liability. The standards required by this chapter are considered reasonable for regulatory purposes. This chapter does not imply that areas outside the designated Flood Plain (Overlay) District areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City of Garnavillo or any officer or employee thereof for any flood damages that from reliance on this chapter or any administrative decision lawfully made thereunder.

7. Severability. If any section, clause, provision or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

160.03 ESTABLISHMENT OF FLOOD PLAIN (OVERLAY) DISTRICT. The areas within the jurisdiction of this chapter are hereby designated as a Flood Plain (Overlay) District and shall be subject to the standards of the Flood Plain (Overlay) District. The Flood Plain (Overlay) District boundaries shall be shown on the Flood Insurance Rate Map for Clayton County and Incorporated Areas, City of Garnavillo, Panel 19043C0325E, 087E, dated June 2, 2011.

160.04 STANDARDS FOR FLOOD PLAIN (OVERLAY) DISTRICT. All uses must be consistent with the need to minimize flood damage and meet the following applicable performance standards. Where floodway data and 100-year flood data have not been provided on the Flood Insurance Rate Map, the Iowa Department of Natural Resources shall be contacted to compute such data. The applicant will be responsible for providing the Department of Natural Resources with sufficient technical information to make such determination.

1. All development within the Flood Plain (Overlay) District shall be consistent with the need to minimize flood damage and meet the following applicable performance standards. All development shall:

   A. Be adequately anchored to prevent flotation, collapse or lateral movement of the structure.
B. Use construction methods and practices that will minimize flood damage.

C. Use construction materials and utility equipment that are resistant to flood damage.

D. Obtain all other necessary permits from federal, state and local governmental agencies including approval when required from the Iowa Department of Natural Resources.

2. Residential Buildings. All new or substantially improved residential structures shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the 100-year flood level. Construction shall be upon compacted fill which shall, at all points, be no lower than 1.0 ft. above the 100-year flood level and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers) may be allowed subject to favorable consideration by the Board of Adjustment, where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstand the various forces and hazards associated with flooding. All new residential structures shall be provided with a means of access which will be passable by wheeled vehicles during the 100-year flood.

3. Non-residential Buildings. All new or substantially improved non-residential buildings shall have the lowest floor (including basement) elevated a minimum of one (1) foot above the 100-year flood level, or together with attendant utility and sanitary systems, be floodproofed to such a level. When floodproofing is utilized, a professional engineer registered in the State of Iowa shall certify that the floodproofing methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 100-year flood; and that the structure, below the 100-year flood level is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum 1988) to which any structures are floodproofed shall be maintained by the Administrator.

4. All new and substantially improved structures.

A. Fully enclosed areas below the “lowest floor” (not including basements) that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the following minimum criteria:

(1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

Such areas shall be used solely for parking of vehicles, building access and low damage potential storage.

B. New and substantially improved structures must be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

C. New and substantially improved structures must be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
5. Factory-built homes:
   A. All factory-built homes, including those placed in existing factory-built home parks or subdivisions shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of one (1) foot above the 100-year flood level.
   B. All factory-built homes, including those placed in existing factory-built home parks or subdivisions shall be anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

6. Utility and Sanitary Systems:
   A. On-site waste disposal and water supply systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.
   B. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system as well as the discharge of effluent into flood waters. Wastewater treatment facilities (other than on-site systems) shall be provided with a level of flood protection equal to or greater than one (1) foot above the 100-year flood elevation.
   C. New or replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Water supply treatment facilities (other than on-site systems) shall be provided with a level of protection equal to or greater than one (1) foot above the 100-year flood elevation.
   D. Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.

7. Storage of materials and equipment that are flammable, explosive or injurious to human, animal or plant life is prohibited unless elevated a minimum of one (1) foot above the 100-year flood level. Other material and equipment must either be similarly elevated or (i) not be subject to major flood damage and be anchored to prevent movement due to flood waters or (ii) be readily removable from the area within the time available after flood warning.

8. Flood control structural works such as levees, flood walls, etc. shall provide, at a minimum, protection from a 100-year flood with a minimum of 3 ft. of design freeboard and shall provide for adequate interior drainage. In addition, structural flood control works shall be approved by the Department of Natural Resources.

9. Watercourse alterations or relocations must be designed to maintain the flood carrying capacity within the altered or relocated portion. In addition, the Department of Natural Resources must approve such alterations or relocations.

10. Subdivisions (including factory-built home parks and subdivisions) shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Development associated with subdivision proposals (including the installation of public utilities) shall meet the applicable performance standards of this chapter. Subdivision proposals intended for residential use shall provide all lots with a means of access which will be passable by wheeled vehicles during the 100-year flood. Proposals for subdivisions greater than five (5) acres or fifty (50) lots (whichever is less) shall include 100-year flood elevation data for those areas located within the Flood Plain (Overlay) District.

11. Accessory Structures.
   A. Detached garages, sheds, and similar structures accessory to a residential use are exempt from the 100-year flood elevation requirements where the following criteria are satisfied.
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(1) The structure shall not be used for human habitation.

(2) The structure shall be designed to have low flood damage potential.

(3) The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters.

(4) The structure shall be firmly anchored to prevent flotation which may result in damage to other structures.

(5) The structure’s service facilities such as electrical and heating equipment shall be elevated or floodproofed to at least one foot above the 100-year flood level.

B. Exemption from the 100-year flood elevation requirements for such a structure may result in increased premium rates for flood insurance coverage of the structure and its contents.

12. Recreational Vehicles.

A. Recreational vehicles are exempt from the requirements of Section 160.04(5) of this chapter regarding anchoring and elevation of factory-built homes when the following criteria are satisfied.

(1) The recreational vehicle shall be located on the site for less than 180 consecutive days, and,

(2) The recreational vehicle must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system and is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

B. Recreational vehicles that are located on the site for more than 180 consecutive days or are not ready for highway use must satisfy requirements of Section 160.04(5) of this chapter regarding anchoring and elevation of factory-built homes.

13. Pipeline river and stream crossings shall be buried in the streambed and banks, or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering.

160.05 ADMINISTRATION.

1. Appointment, Duties and Responsibilities of Zoning Administrator.

A. The Zoning Administrator is hereby appointed to implement and administer the provisions of this chapter and will herein be referred to as the Administrator.

B. Duties of the Administrator shall include, but not necessarily be limited to the following:

(1) Review all flood plain development permit applications to assure that the provisions of this chapter will be satisfied.

(2) Review flood plain development applications to assure that all necessary permits have been obtained from federal, state and local governmental agencies including approval when required from the Department of Natural Resources for flood plain construction.

(3) Record and maintain a record of (i) the elevation (in relation to National Geodetic Vertical Datum 1988) of the lowest floor (including basement) of all new or substantially improved structures or (ii) the elevation to which all new or substantially improved structures have been floodproofed.
(4) Notify adjacent communities/counties and the Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notifications to the Federal Emergency Management Agency.

(5) Keep a record of all permits, appeals and such other transactions and correspondence pertaining to the administration of this chapter.

(6) Submit to the Federal Insurance Administrator an annual report concerning the community’s participation, utilizing the annual report form supplied by the Federal Insurance Administrator.

(7) Notify the Federal Insurance Administration of any annexations or modifications to the community’s boundaries.

(8) Review subdivision proposals to insure such proposals are consistent with the purpose of this chapter and advise the Zoning Board of Adjustment of potential conflict.

2. Flood Plain Development Permit.

A. Permit Required. A Flood Plain Development Permit issued by the Administrator shall be secured prior to any flood plain development (any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, filling, grading, paving, excavation or drilling operations), including the placement of factory-built homes.

B. Application for Permit. Application shall be made on forms furnished by the Administrator and shall include the following:

(1) Description of the work to be covered by the permit for which application is to be made.

(2) Description of the land on which the proposed work is to be done (i.e., lot, block, track, street address or similar description) that will readily identify and locate the work to be done.

(3) Indication of the use or occupancy for which the proposed work is intended.

(4) Elevation of the 100-year flood.

(6) Elevation (in relation to North American Vertical Datum 1988) of the lowest floor (including basement) of buildings or of the level to which a building is to be floodproofed.

(7) For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.

(8) Such other information as the Administrator deems reasonably necessary (e.g., drawings or a site plan) for the purpose of this chapter.

C. Action on Permit Application. The Administrator shall, within a reasonable time, make a determination as to whether the proposed flood plain development meets the applicable standards of this chapter and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefor. The Administrator shall not issue permits for variances except as directed by the Board of Adjustment.

D. Construction and Use to Be as Provided in Application and Plans. Flood Plain Development Permits based on the basis of approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a
3. Variance. The Board of Adjustment may authorize upon request in specific cases such variances from the terms of this chapter that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship. Variances granted must meet the following applicable standards.

A. Variances shall only be granted upon: (a) a showing of good and sufficient cause, (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local codes or ordinances.

B. Variances shall not be issued within any designated floodway if any increase in flood levels during the 100-year flood would result. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.

C. Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

D. In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this chapter, the applicant shall be notified in writing over the signature of the Administrator that: (a) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage and (b) such construction increases risks to life and property.

E. All variances granted shall have the concurrence or approval of the Department of Natural Resources.

4. Factors Upon Which the Decision of the Board of Adjustment Shall Be Based. In passing upon applications for variances, the Board shall consider all relevant factors specified in other sections of this chapter and:

A. The danger to life and property due to increased flood heights or velocities caused by encroachments.

B. The danger that materials may be swept on to other land or downstream to the injury of others.

C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.

D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

E. The importance of the services provided by the proposed facility to the City.

F. The requirements of the facility for a flood plain location.

G. The availability of alternative locations not subject to flooding for the proposed use.

H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
I. The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.

J. The safety of access to the property in times of flood for ordinary and emergency vehicles.

K. The expected heights, velocity, duration, rate of rise and sediment transport of the flood water expected at the site.

L. The cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities (sewer, gas, electrical and water systems), facilities, streets and bridges.

M. Such other factors which are relevant to the purpose of this chapter.

5. Conditions Attached to Variances. Upon consideration of the factors listed above, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose of this chapter. Such conditions may include, but not necessarily be limited to:

A. Modification of waste disposal and water supply facilities.

B. Limitation of periods of use and operation.

C. Imposition of operational controls, sureties, and deed restrictions.

D. Requirements for construction of channel modifications, dikes, levees and other protective measures, provided such are approved by the Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this chapter.

E. Floodproofing measures shall be designed consistent with the flood protection elevation for the particular area, flood velocities, duration, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The Board of Adjustment shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors for the particular area.

160.06 NONCONFORMING USES.

1. A structure or the use of a structure or premises which was lawful before the passage or amendment of this chapter, but which is not in conformity with the provisions of this chapter, may be continued subject to the following conditions:

A. If such use is discontinued for six (6) consecutive months, any future use of the building premises shall conform to this chapter.

B. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

C. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the market value of the structure before the damage occurred, unless it is reconstructed in conformity with the provisions of this chapter.

2. Except as provided in Section 160.06(1)(B) any use which has been permitted as a conditional use or variance shall be considered a conforming use.

160.07 PENALTIES FOR VIOLATION. Violations of the provisions of this chapter or failure to comply with any of the requirements (including violations of conditions and safeguards established in connection with grants of conditional uses or variances) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof
be fined not more than five hundred dollars ($500.00) or imprisoned for not more than thirty (30) days. Each day such violation continues shall be considered a separate offense. Nothing herein contained prevents the City of Garnavillo from taking such other lawful action as is necessary to prevent or remedy violation.

160.08 AMENDMENTS. The regulations and standards set forth in this chapter may from time to time be amended, supplemented, changed, or repealed. No amendment, supplement, change, or modification shall be undertaken without prior approval of the Department of Natural Resources.

160.09 DEFINITIONS. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

1. “Base Flood” means the flood having one (1) percent chance of being equaled or exceeded in any given year. (See 100-year flood).

2. “Basement” means any enclosed area of a building which has its floor or lowest level below ground level (subgrade) on all sides. Also see “lowest floor.”

3. “Development” means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations. “Development” does not include “minor projects” or “routine maintenance of existing buildings and facilities” as defined in this section. It also does not include gardening, plowing and similar practices that do not involve filling, grading.

4. “Existing Construction” means any structure for which the “start of construction” commenced before the effective date of the first flood plain management regulations adopted by the community. May also be referred to as “existing structure.”

5. “Existing Factory-Built Home Park or Subdivision” means a factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the first flood plain management regulations adopted by the community.

6. “Expansion of Existing Factory-Built Home Park or Subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

7. “Factory-Built Home” means any structure, designed for residential use which is wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation, on a building site. For the purpose of this chapter factory-built homes include mobile homes, manufactured homes and modular homes, and also include “recreational vehicles” which are placed on a site for greater than 180 consecutive days and not fully licensed for and ready for highway use.

8. “Factory-Built Home Park” means a parcel or contiguous parcels of land divided into two or more factory-built home lots for sale or lease.

9. “Flood” means a general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.

10. “Flood Elevation” means the elevation floodwaters would reach at a particular site during the occurrence of a specific flood. For instance, the 100-year flood elevation is the elevation of flood waters related to the occurrence of the 100-year flood.
11. “Flood Insurance Rate Map (FIRM)” means the official map prepared as part of (but published separately from) the Flood Insurance Study which delineates both the flood hazard areas and the risk premium zones applicable to the community.

12. “Flood Plain” means any land area susceptible to being inundated by water as a result of a flood.

13. “Flood Plain Management” means an overall program of corrective and preventive measures for reducing flood damages and promoting the wise use of flood plains, including but not limited to emergency preparedness plans, flood control works, floodproofing and flood plain management regulations.

14. “Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities, which will reduce or eliminate flood damage to such structures.

15. “Floodway” means the channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not cumulatively increase the water surface elevation of the base flood by more than one (1) foot.

16. “Floodway Fringe” means those portions of the flood plain, other than the floodway, which can be filled, leveed, or otherwise obstructed without causing substantially higher flood levels or flow velocities.

17. “Historic Structure” means any structure that is:
   A. Listed individually in the National Register of Historic Places, maintained by the Department of Interior, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing of the National Register;
   B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
   C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
   D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by either (i) an approved state program as determined by the Secretary of the Interior or (ii) directly by the Secretary of the Interior in states without approved programs.

18. “Lowest Floor” means the floor of the lowest enclosed area in a building including a basement except when all the following criteria are met:
   A. The enclosed area is designed to flood to equalize hydrostatic pressure during floods with walls or openings that satisfy the provisions of Section 160.05(2)(D) of this chapter; and
   B. The enclosed area is unfinished (not carpeted, drywalled, etc.) and used solely for low damage potential uses such as building access, parking or storage; and
   C. Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one (1) foot above the 100-year flood level; and
   D. The enclosed area is not a “basement” as defined in this section.

In cases where the lowest enclosed area satisfies criteria A, B, C and D above, the lowest floor is the floor of the next highest enclosed area that does not satisfy the criteria above.
19. “Minor Projects” means small development activities (except for filling, grading and excavating) valued at less than $500.

20. “New Construction” (new buildings, factory-built home parks) means those structures or development for which the start of construction commenced on or after the effective date of the first flood plain management regulations adopted by the community.

21. New Factory-built Home Park or Subdivision” means a factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of first flood plain management regulations adopted by the community.

22. “One Hundred (100) Year Flood” means a flood, the magnitude of which has a one (1) percent chance of being equaled or exceeded in any given year or which, on the average, will be equaled or exceeded at least once every one hundred (100) years.

23. “Recreational Vehicle” means a vehicle which is:
   A. Built on a single chassis;
   B. Four hundred (400) square feet or less when measured at the largest horizontal projection;
   C. Designed to be self-propelled or permanently towable by a light duty truck; and
   D. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

24. “Routine Maintenance of Existing Buildings and Facilities” means repairs necessary to keep a structure in a safe and habitable condition that do not trigger a building permit, provided they are not associated with a general improvement of the structure or repair of a damage structure. Such repairs include:
   A. Normal maintenance of structures such as re-roofing, replacing roofing tiles and replacing siding;
   B. Exterior and interior painting, papering, tiling, carpeting, cabinets, countertops and similar finish work;
   C. Basement sealing;
   D. Repairing or replacing damaged or broken window panes;
   E. Repairing plumbing systems, electrical systems, heating or air conditioning systems and repairing wells or septic systems.

25. “Special Flood Hazard Area” means the land within a community subject to the “100-year flood.” This land is identified as Zone A on the community’s Flood Insurance Rate Map.

26. “Start of Construction” includes substantial improvement, and means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement, was within 180 days of the permit date. The actual start means either the first placement or permanent construction of a structure on a site, such as pouring of a slab or footings, the installation of pile, the construction of columns, or any work beyond the stage of excavation; or the placement of a factory-built home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first
alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

27. “Structure” means anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factory-built homes, storage tanks, and other similar uses.

28. “Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. “Substantial damage” also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

29. “Substantial Improvement” means any improvement to a structure which satisfies either of the following criteria:

A. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either (i) before the “start of construction” of the improvement, or (ii) if the structure has been “substantially damaged” and is being restored, before the damage occurred.

The term does not, however, include any project for improvement of a structure to correct existing state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions. The term also does not include any alteration of an “historic structure,” provided the alteration will not preclude the structure's designation as an “historic structure.”

B. Any addition which increases the original floor area of a building by 25 percent or more. All additions constructed after the effective date of the flood plain management regulations adopted by the community shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

30. “Variance” means a grant of relief by a community from the terms of the flood plain management regulations.

31. “Violation” means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations.

(Chapter 160 – Ord. 04-2011 – Sep. 12 Supp.)
CHAPTER 165

ZONING REGULATIONS
CHAPTER 166

SUBDIVISION REGULATIONS

166.01 PURPOSE. The purpose of this chapter is to establish minimum standards for the design, development and improvement of all new subdivisions and resubdivisions so that existing developments will be protected and so that adequate provisions are made for public services and to promote the health, safety and general welfare in the City.

166.02 DEFINITIONS. For use in this chapter, the following terms or words are defined.

1. “Lot” means a portion of a subdivision or other parcel of land intended for the purpose, whether immediate or future, of transfer of ownership or for building development.

2. “Performance bond” means a surety bond or cash deposit made out to the City, in an amount equal to the full cost of the improvements which are required by this chapter, said cost estimated by the City Council Committee on Streets, and said surety bond or cash bond being legally sufficient to secure to the City that the said improvements will be constructed in accordance with this chapter.

3. “Plat” means a map, drawing or chart on which the subdivider’s plan of the subdivision of land is presented and which the subdivider submits for approval and intends, in final form, to record.

4. “Subdivider” means the person undertaking the subdivision or resubdivision of a tract or parcel of land.

5. “Subdivision” means the division of land into three (3) or more lots or other division of land for the purpose, whether immediate or future, of transfer of ownership or building development. The term, when appropriate to the context, relates to the process of subdividing or to the land subdivided, or the resubdivision of land heretofore divided or platted into lots or other divisions of land, or, if a new street is involved, any division of land.

166.03 PLATTING REQUIRED. Every owner of any tract or parcel of land who has subdivided or shall hereafter subdivide or plat the same for the purpose of laying out an addition, subdivision, building lot or lots, acreage or suburban lots within the City or, pursuant to Section 354.9 of the Code of Iowa, within two (2) miles from the corporate limits shall cause plats of such area to be made in the form, and containing the information, as hereinafter set forth before selling any lots therein contained or placing the plat on record.

166.04 PROCEDURE. In obtaining final approval of a proposed subdivision by the Council, the subdivider shall submit a preliminary plat in accordance with the requirements hereinafter set forth and install improvements or provide a performance bond.
166.05 REQUIREMENTS OF PRELIMINARY PLAT. The submitted plat shall be clearly and legibly drawn to a scale of not more than one hundred feet to one inch (100′ to 1") with India ink on a reproducible tracing linen. It shall show:

1. Title. The title under which the subdivision is to be recorded.

2. Dimensions. The linear dimensions in feet and decimals of a foot of the subdivision boundary, lot lines, streets and alleys. These should be exact and complete to include all distances, radii, arc, chords, points of tangency and central angles.

3. Street Names. Street names and clear designations of public alleys. Streets that are continuations of present streets should bear the same name. If new names are needed, they should be distinctive. Street names may be required to conform to the City Plan.

4. Location of Monuments. Location, type, materials, and size of all monuments and markers including all U.S., county or other official bench marks.

5. Plat Acknowledged. The plat should be signed and acknowledged by the subdivision land owner and his or her spouse.

6. Certification. A sealed certification of the accuracy of the plat by the professional engineer or land surveyor who drew the submitted plat.

166.06 SUBMITTED PLAT ATTACHMENTS. The submitted plat shall have the following attached to it:

1. A correct description of the subdivision land.

2. A statement by the proprietors and their spouses, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgments of deeds. The statement by the proprietors may also include a dedication to the public of all lands within the plat that are designated for streets, alleys, parks, open areas, school property or other public use, if the dedication is approved by the Council.

3. An opinion by an attorney-at-law who has examined the abstract of title of the land being platted. The opinion shall state the names of the proprietors and holders of mortgages, liens or other encumbrances on the land being platted and shall note the encumbrances, along with any bonds securing the encumbrances. Utility easements shall not be construed to be encumbrances for the purpose of this section.

4. A certificate of the County Treasurer that the land is free from certified taxes and certified special assessments or that the land is free from certified taxes and that the certified special assessments are secured by bond in compliance with Section 354.12 of the Code of Iowa.

5. A certificate of dedication of streets and other public property.

6. A statement of restrictions of all types that run with the land and become covenants in the deeds of lots.

7. Resolution and certificate for approval by the Council and for signatures of the Mayor and Clerk.

8. Profiles, typical cross sections, and specifications of street improvements and utility systems, to show the location, size and grade. These should be shown on a fifty
(50) foot horizontal scale and a five (5) foot vertical scale with west or south at the left.

9. A certificate by the Council committees or other designated City official that all required improvements and installations have been completed, or that a performance bond guaranteeing completion has been approved by the City Attorney and filed with the Clerk, or that the Council has agreed that the City will provide the necessary improvements and installations and assess the costs against the subdivider or future property owners in the subdivision.

10. The encumbrance bond, if any.

166.07 ACTION BY THE COUNCIL. Upon receipt of the certification by the designated City official, the Council shall, within a reasonable time, either approve or disapprove the submitted plat.

1. In the event that said plat is disapproved by the Council, such disapproval shall be expressed in writing and shall point out wherein said proposed plat is objectionable.

2. In the event that said plat is found to be acceptable and in accordance with this chapter, the Council shall accept the same.

3. The passage of a resolution by the Council accepting the plat shall constitute final approval of the platting of the area shown on the submitted plat, but the subdivider or owner shall cause such plat to be recorded in the office of the County Recorder of Clayton County, Iowa, and shall file satisfactory evidence of such recording in the office of the Clerk before the City shall recognize the plat as being in full force and effect.

166.08 IMPROVEMENTS REQUIRED. The subdivider shall install and construct all improvements required by this chapter. All required improvements shall be installed and constructed in accordance with the specifications and under the supervision of the Council and to its satisfaction.

1. Streets and Alleys. All streets and alleys within the platted area which are dedicated for public use shall be brought to the grade approved by the Council after receiving the report and recommendations of the City Council Committee on Streets.

2. Roadways. All roadways shall be prepared with a crushed stone base as the Council may require.

3. Curb and Gutter. Curb and gutter may, at the discretion of the Council, be required on all streets. All curb and gutter shall be constructed to the grade approved by the Council after receiving the report and recommendations of the City Council Committee on Streets.

4. Sidewalks. Sidewalks may be required by the Council if they are considered necessary for the general welfare and safety of the community. Sidewalks shall be constructed to the grade approved by the Council after receiving the report and recommendations of the City Council Committee on Streets.

5. Water Lines. Where a public water main is reasonably accessible, the subdivider shall connect with such water main and provide a water connection for each lot with service pipe installed to the property line in accordance with the Water Department standards, procedure and supervision.
6. **Sewers.** Provision shall be made for adequate sanitary sewage disposal and storm drainage as follows:

   A. Where a public sanitary sewer is reasonably accessible, the subdivider shall connect or provide for the connection with such sanitary sewer and shall provide within the subdivision the sanitary sewer system required to make the sewer accessible to each lot in the subdivision. Sanitary sewers shall be stubbed into each lot. Sewer systems shall be approved by the Council and the State Department of Health and the construction shall be subject to the supervision of the Council Committee on Water and Disposal.

   B. Where sanitary sewers are not available, other facilities, as approved by the Council and the State Department of Health, must be provided for the adequate disposal of sanitary wastes.

   C. Adequate provisions shall be made for the disposal of storm waters, subject to the approval of the Council and to the supervision of the City Council Committee on Water and Disposal.

166.09 **COMPLETION OF IMPROVEMENTS.** Before the Council will expend any public funds in the subdivision, all of the foregoing improvements shall be constructed and accepted by formal resolution of the Council. Before passage of said resolution of acceptance, the aforementioned Council committees shall report that said improvements meet all City specifications and ordinances or other City requirements, and the agreements between subdivider and the City.

166.10 **PERFORMANCE BOND.** The completion requirement may be waived in whole or in part if the subdivider will post a performance bond with the Council guaranteeing that improvements not completed will be constructed within a period of one (1) year from the day the lots are conveyed and/or occupied; but final acceptance of the plat will not constitute final acceptance by the City of any improvements to be constructed.

166.11 **VARIANCES.** Where in the case of a particular proposed subdivision, it can be shown that strict compliance with the requirements of this chapter would result in extraordinary hardship to the subdivider because of unusual topography or other conditions, the Council may, upon recommendation from the Commission, vary, modify or waive the requirements so that substantial justice may be done and the public interest secured. Provided, however, such variance, modification or waiver will not have the effect of nullifying the intent and purpose of this chapter. In no case shall any variance or modification be more than minimum easing of the requirements and in no instance shall it be in conflict with any zoning ordinance and such variances and waivers may be granted only by the affirmative vote of three-fourths (3/4) of the members of the Council.

166.12 **CHANGES AND AMENDMENTS.** Any regulations or provisions of this chapter may be changed and amended from time to time by the Council, provided however, that such changes or amendments shall not become effective until after a public hearing has been held, public notice of which shall have been published at least once, not less than seven (7) or more than twenty (20) days before the date of the hearing.