

TITLE III: ADMINISTRATION

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CHAPTER 30: GENERAL PROVISIONS

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GENERAL PROVISIONS

§ 30.01 SALARIES.

(A) *Councilors.*

(1) The salary of the City Councilors shall be an amount set by City Council from time to time by resolution, payable in equal installments in accordance with

the city's normal payroll schedule. For purposes of this section, the salaries are compensation for attending regularly scheduled meetings of the City Council, including agenda items and fulfilling the duties and obligations of the office as prescribed by the city code and statutes of the state.

(2) A member of the City Council may be excused from attendance up to four regularly scheduled City Council meetings annually for reasons of illness or absence from the community. For additional absences from regularly scheduled City Council meetings, the compensation provided herein shall be reduced by an amount set by City Council from time to time by resolution.

(B) *Mayor.* The salary of the Mayor shall be an amount set by City Council from time to time by resolution, payable in equal installments in accordance with the city's normal payroll schedule.

(C) *Commissioners' salaries.*

(1) Members of the Planning Commission, whether serving as members of the Commission, Board of Adjustment, Building Code Board of Appeals or the Design Review Board, shall receive a salary as determined by resolution of the City Council.

(2) Members of the City Public Utilities Commission and the Planning and Zoning Commission shall receive a salary as determined by resolution of the City Council.

(3) Members of the Proctor Economic Development Authority shall receive compensation as determined by resolution of the City Council.

(4) Members of the Police Civil Service Commission shall receive compensation as determined by resolution of the City Council.

(5) Members of the Cable Television Commission shall receive compensation as determined by resolution of the City Council.

(D) *Committee members' reimbursement.* Members of committees shall receive compensation as determined by resolution of the City Council. This division (D) shall not apply to city employees, members of the Planning and Zoning Commissioner or the City Public Utilities Commission.

(Prior Code, § 202.01)

CONFLICTS OF INTEREST

§ 30.15 PURPOSE.

The City Council does find that by setting forth those acts or actions by Council members, members of any board or their employees which it deems incompatible with the best interest of the city, the public good will be served and the faith and confidence of the citizens in their government will be promoted. The Council, with these hopes, passes this subchapter. As used herein, the term **BOARD** includes any and all boards, committees or commissions of the city, to include the City Public Utilities Commission. (Prior Code, § 202.03)

§ 30.16 RULES OF CONDUCT.

(A) *Rules of conduct.*

(1) No Council member, member of any board or employee shall use his or her position to secure special privilege, or exemptions for himself or herself or others.

(2) No Council member, member of any board or employee in any matter before the Council or board, which affects his or her financial interest or those of a business with which he or she is associated, unless the effect on him or her is no greater than that of other members of his or her business classification, profession or occupation, shall fail to disclose for the record that interest prior to any discussion or vote.

(3) No Council member, member of any board or employee shall receive any compensation, gift, reward or gratuity in any matter connected with the duties of his or her office except as provided by law.

(4) No Council member, member of any board or employee shall request or permit the use of city owned vehicles, equipment, machinery or property for personal convenience or profit, except when the services are available to the public generally or are provided as municipal policy for the use of the public officials or employee in the conduct of official business.

(5) (a) No Council member, member of any board or employee shall engage in any business or transaction or shall have a financial interest, which is incompatible with the proper discharge of his or her official duties in the public interest or would tend to impair his or her independence or judgment or action in the performance of his or her official duties.

(b) Specific conflicts of interest are, but shall not be limited to, the following:

1. Incompatible employment; holding a position in addition to a public position which interferes, or may interfere, with the proper discharge of the public duty;

2. Participation in transactions as a public representative with a business entity in which the public official or employee has a direct or indirect financial interest without full disclosure; and

3. Entry into contracts or other conduct of business for profit by a business in which a public official or employee has a substantial or controlling interest, especially when the public official or employee can influence the contract or business because of his or her public position.

(6) City Council shall determine if any outside employment by its employees is compatible or incompatible with their public position. No employee shall hold a position which the City Council deems incompatible with his or her public position. **EMPLOYMENT** is defined for the purpose of this division (A)(6) as any position or obligation held or taken for financial or other gain, and shall include to full-time work, part-time work, salaried positions, hourly rate positions, contract work or subcontract work whether it be continuing employment as a one time transaction or obligation. The City Public Utilities Commission shall make the same determinations relative to its employees.

(7) All employees, members of any board or City Council members shall maintain and hold confidential all information disclosed at closed meetings of the Council or any other board or commission of the city.

(B) *Application.* The rules of conduct herein shall apply to all employees of the city or its utility, to include the Mayor, City Council members and Commissioners of the Public Utilities Commission.

(Prior Code, § 202.03)

PUBLIC CONTRACTS

§ 30.30 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPRENTICE-TRAINEE. An employee who is working under a training program which is approved either by the U.S. Department of Labor Bureau of Apprenticeship and Training or the State Director of Voluntary Apprenticeship.

BASIC HOURLY RATE. The hourly wage paid to any employee.

FRINGE BENEFITS. Employer contribution for health and welfare benefits, vacation benefits, pension benefits and all other economic benefits other than the basic hourly rate.

PREVAILING WAGE RATE. The basic hourly rate plus fringe benefits prevailing in the City of Proctor as determined by the United States Secretary of Labor pursuant to the Davis-Bacon Act, being 40 U.S.C. §§ 3141-3148, as amended.

PROJECT. Erection, construction, demolition, remodeling or repairing of any public building, and the construction or repairing of highways, sidewalks, bridges, water or gas lines, sewers and sewage treatment facilities, or other public works performed under contract with the city.

(Prior Code, § 304.01)

§ 30.31 WAGE RATES AND HOURS FOR CITY PROJECTS.

(A) Any contract which provides for a project of estimated total cost of an amount set by City Council from time to time by resolution shall contain a stipulation that no laborer, mechanic or apprentice-trainee employed directly upon the project work site by the contractor or any subcontractor shall be permitted or required to work at a rate of pay less than the prevailing wage rate; nor shall any such employee be permitted or required to work more than eight hours in any work day or 40 hours in any work week unless he or she is paid at a rate of at least one and one-half times the basic hourly rate for all hours in excess of eight per day or 40 per week and unless he or she receives fringe benefits that are at least equal to those in the prevailing wage rate.

(B) (1) All contracts for city projects shall have applicable schedules of prevailing wage rates set forth in the contract.

(2) Schedules of applicable prevailing wage rates shall be present on all project job sites and shall either be posted on the site or be on the person of any supervisor in charge of the job site.

(C) (1) Employees on projects shall be paid at least weekly.

(2) Fringe benefits shall be paid either in cash or to an employee benefit plan that has been approved by the U.S. Department of Labor.

(D) (1) Any contractor or subcontractor working on a project shall furnish the city with a copy of all payrolls relating to the project.

(2) The payroll reports shall be submitted weekly on U.S. Department of Labor standard forms or their equivalent to the employee of the city in charge of supervising contract performance.

(E) (1) No contractor or subcontractor working on a project shall evade or attempt to evade the provisions of this section through the use of non-recognized training programs.

(2) The only employees involved in training programs that shall be allowed to work on projects covered by this section shall be apprentice-trainees as defined by this subchapter.

(F) This section shall not apply to contracts for projects where the total estimated cost of the project is less than an amount set by City Council from time to time by resolution; nor to materialmen who do no more than deliver materials to the work site, except that this section shall apply to employees who deliver asphalt, concrete or mineral aggregate such as sand, gravel or stone where the material is incorporated into the project by depositing the material substantially in place, either directly or through spreaders, from the transporting vehicle.

(Prior Code, § 304.02) Penalty, see § 30.99

§ 30.32 KICKBACKS FROM PUBLIC WORKS EMPLOYEES PROHIBITED.

No contractor working on a project or other person shall, by force, intimidation or threat of termination of employment, cause any employee working on a project to give up any part of the compensation to which he or she is entitled under his or her contract of employment.

(Prior Code, § 304.03)

APPLICANTS FOR CITY EMPLOYMENT, CITY LICENSES AND CANVASSERS

§ 30.45 APPLICANTS FOR CITY EMPLOYMENT.

(A) *Purpose.* The purpose and intent of this section is to establish regulations that will allow law enforcement access to the state's computerized criminal history information for specified non-criminal purposes of employment background checks for the positions described in the following section.

(B) *Criminal history employment background investigations.*

(1) The City Police Department is hereby required, as the exclusive entity within the city, to do a criminal history background investigation on the applicants for all regular part-time or full-time employees of the city and other positions which work with children or vulnerable adults unless the city's hiring authority concludes that a background investigation is not needed.

(2) In conducting the criminal history background investigation in order to screen employment applicants, the Police Department is authorized to access data maintained in the State Bureau of Criminal Apprehensions computerized criminal history information system in accordance with BCA policy. Any data that is accessed and acquired shall be maintained at the Police Department under the care and custody of the chief law enforcement official or his or her designee. A summary of the results of the computerized criminal history data may be released by the Police Department to the hiring authority, including the City Council, the City Administrator or other city staff involved in the hiring process.

(3) (a) Before the investigation is undertaken, the applicant must authorize the Police Department by written consent to undertake the investigation. The written consent must fully comply with the provisions of M.S. Ch. 13, as it may be amended from time to time, regarding the collection, maintenance and use of the information. Except for the positions set forth in M.S. § 364.09, as it may be amended from time to time, the city will not reject an applicant for employment on the basis of the applicant's prior conviction unless the crime is directly related to the position of employment sought and the conviction is for a felony, gross misdemeanor or misdemeanor with a jail sentence.

(b) If the city rejects the applicant's request on this basis, the city shall notify the applicant in writing of the following:

1. The grounds and reasons for the denial;
2. The applicant complaint and grievance procedure set forth in M.S. § 364.06, as it may be amended from time to time;
3. The earliest date the applicant may reapply for employment; and
4. That all competent evidence of rehabilitation will be considered upon reapplication.

(Ord. 01-13, passed 2-19-2013)

§ 30.46 APPLICANTS FOR CITY LICENSES AND CANVASSERS.

(A) *Purpose.* The purpose and intent of this section is to establish regulations that will allow law enforcement access to the state's computerized criminal history information for specified non-criminal purposes of licensing and other background checks.

(B) *Criminal history license background investigations.*

(1) The City Police Department is hereby required, as the exclusive entity within the city, to do a criminal history background investigation on canvassers and the applicants for the following licenses within the city:

- (a) Applicants for liquor licenses; and
- (b) Vendor/peddler licenses.

(2) In conducting the criminal history background investigation in order to screen license applicants, the Police Department is authorized to access data maintained in the State Bureau of Criminal Apprehensions computerized criminal history information system in accordance with BCA policy. Any data that is accessed and acquired shall be maintained at the Police Department under the care and custody of the chief law enforcement official or his or her designee. A summary of the results of the computerized criminal history data may be released by the Police Department to the licensing authority, including the City Council, the City Administrator or other city staff involved the license approval process.

(3) (a) Before the investigation is undertaken, the applicant must authorize the Police Department by written consent to undertake the investigation. The written consent must fully comply with the provisions of M.S. Ch. 13, as it may be amended from time to time, regarding the collection, maintenance and use of the information. Except for the positions set forth in M.S. § 364.09, as it may be amended from time to time, the city will not reject an applicant for a license on the basis of the applicant's prior conviction unless the crime is directly related to the license sought and the conviction is for a felony, gross misdemeanor or misdemeanor with a jail sentence.

(b) If the city rejects the applicant's request on this basis, the city shall notify the applicant in writing of the following:

1. The grounds and reasons for the denial;
2. The applicant complaint and grievance procedure set forth in M.S. § 364.06, as it may be amended from time to time;
3. The earliest date the applicant may reapply for the license; and
4. That all competent evidence of rehabilitation will be considered upon reapplication.

(Ord. 01-13, passed 2-19-2013)

§ 30.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) Any person violating the provisions of § 30.31 shall be guilty of a misdemeanor with each day of violation constituting a separate offense. In addition, if the prevailing wage rate is not paid to employees working on a project, the city may withhold contract payments to the contractor until the deficiencies are corrected.

(Prior Code, § 304.02)

CHAPTER 31: COUNCIL

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- 31.01 Meetings
- 31.02 Mayor
- 31.03 Minutes
- 31.04 Agenda
- 31.05 Quorum and voting
- 31.06 Ordinances, resolutions and motions
- 31.07 Amendment and suspension of rules

§ 31.01 MEETINGS.

(A) *Time and place.*

(1) Regular meetings of the Council shall be held on the first and third Mondays of each calendar month at a time that the Council, by resolution, shall fix. Any regular meetings falling upon a holiday shall be held on the following business day at the same time and place. All meetings, including regular, special and recessed meetings, shall be held in the City Hall except that the Council may hold any meeting at other facilities appropriate for those meetings provided 48 hours' posted notice of the location of the meetings appears in the City Hall prior to any meeting.

(2) The Council may, upon the notice as set forth in this section, also hold regular and special meetings at times other than as set forth above.

(B) *Special meetings.*

(1) Special meetings of the Council may be called by the Mayor or by any two members of the Council by writing, filed with the Clerk-Treasurer. At least one day before the meeting, the Clerk-Treasurer shall notify each member of the time, place and purpose of the meeting by causing written notice thereof to be mailed or delivered to him or her personally if he or she can be found, or, if he or she cannot be found, by leaving a copy at the home of the member with some person of suitable age and discretion. Any special meeting attended by all Council members shall be a valid meeting for the transaction of any business that may come before the meeting.

(2) The provisions regarding notice set forth in division (A) above shall apply to all special meetings not held in City Hall.

(C) *First meeting.*

(1) At the first regular Council meeting in January of each year the Council shall:

- (a) Designate the depository of city funds;
- (b) Designate the official newspaper;
- (c) Choose an Acting Mayor from the Council who shall perform the duties of the Mayor during the disability or absence of the Mayor from the city or, in case of vacancy in office of Mayor, until a successor has been appointed and qualified; and

(d) Appoint officers and employees and members of boards, commissions and committees as may be necessary.

(2) The provisions regarding notice set forth at division (A) above shall apply to all special meetings not held in City Hall.

(D) *Open meetings.* All Council meetings, including special and adjourned meetings, shall be open to the public except as may be otherwise provided by law. (Prior Code, § 201.01)

§ 31.02 MAYOR.

(A) *Presiding officer.* The Mayor shall preside at all meetings of the Council. In the absence of the Mayor, the Acting Mayor shall preside. In the absence of both, the Clerk-Treasurer shall call the meeting to order and shall preside until the Council members present at the meeting choose one of their number to act temporarily as presiding officer.

(B) *Duties of presiding officer.* The presiding officer shall preserve order, enforce the rules of procedure herein prescribed and determine without debate, subject to the final decision of the Council on appeal, all questions of procedure and order. Except as otherwise provided by statute or by these rules, the proceedings of the Council shall be conducted in accordance with *Robert's Rules of Order, Revised*.

(C) *Appeals.*

(1) Any member may appeal to the Council from a ruling of the presiding officer.

(2) If the appeal is seconded, the member may speak once solely on the question involved and the presiding officer may explain this ruling, but no other Council member shall participate in the discussion. The appeal shall be sustained if it is approved by a majority of the members present, exclusive of the presiding officer.

(D) *Participation in meetings.* Except as otherwise provided by law or this section, the presiding officer shall not be deprived of any of the privileges of a Council member by reason of his or her acting as presiding officer, including the power to move, second and debate from the chair.

(Prior Code, § 201.02)

§ 31.03 MINUTES.

(A) *Recording.* Minutes of each Council meeting shall be kept by the Clerk-Treasurer or, in his or her absence, by the Deputy Clerk-Treasurer. In the absence of both, the presiding officer shall appoint a secretary pro tem. Ordinances, resolutions and claims shall be recorded in full in the minutes.

(B) *Approval and publication.* The minutes of each meeting shall be reduced to typewritten form, shall be signed by the Clerk-Treasurer and published in the official newspaper. At the next regular Council meeting, approval of the minutes shall be considered by the Council. The minutes need not be read aloud, but the presiding officer shall call for any additions or corrections. If there is no objection to a proposed addition or correction, it may be made without a vote of the Council. If there is an objection, the Council shall vote upon the addition or correction. If there are no additions or corrections, the minutes shall stand approved.

(Prior Code, § 201.03)

§ 31.04 AGENDA.

(A) *Order of business.*

(1) Each meeting of the Council shall convene at the time and place appointed therefor.

(2) Council business shall be conducted in the following order:

(a) Call to order, to be scheduled pursuant to § 31.01(A) at 6:00 p.m. of the first and third Mondays, or as noted in that section;

(b) Roll call;

(c) Approval of minutes; and

(d) Approval of agenda:

1. Communications;

2. Planning and zoning;

3. Clerk-Treasurer advises Council;

4. Comments and suggestions from citizens present; to be held at 8:00 p.m. on each Council meeting night, schedule allowing;

5. Committee reports; to be held at 8:30 p.m. on each Council meeting night;

6. Unfinished business;

7. New business;

8. Bills for approval;

9. Liquor bills for approval; and

10. Adjournment.

(B) *Variation of order.* The order of business may be varied by presiding officer; but all public hearings shall be held at the time specified in the notice of hearing.

(C) *Written agenda.* An agenda of the business and claims for each regular Council meeting shall be prepared by the Clerk for the meeting. Any Council member wishing an item to be placed on the agenda to be considered by the Council must have it filed in the office of the City Clerk on or before noon on the preceding Wednesday prior to the regular Council meeting, or on or before noon on the preceding Thursday prior to the regular Council meeting if the meeting is held on a Tuesday. Any other person wishing an item to be placed on the agenda to be considered by the Council must provide a letter to the City Clerk setting forth his or her request in accordance with the above rules prior to the regular Council meeting or must have a Council member place his or her matter on the agenda in accordance with the above rules.

(D) *Additions.* By super-majority vote of the members of the Council in attendance at the regular scheduled meeting, additional business may be added to the agenda for consideration at the meeting in session.

(Prior Code, § 201.04) (Ord. 03-20, passed 3-2-2020)

§ 31.05 QUORUM AND VOTING.

(A) *Quorum.* At all Council meetings a majority of the Council members elected shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time.

(B) *Recording of votes.* The votes of members on any question pending before the Council may be by voice vote, standing vote or in any other manner of voting which signifies the intention of the members; but if the vote is not unanimous there shall be a roll call, and the names of those voting for and against the question shall be recorded in the minutes. If any member, being present, does not vote, the minutes, as to his or her name, shall be marked "Present not voting".

(C) *Majority of passage.* A majority vote of all members of the Council shall be necessary for approval of any ordinance. Except as otherwise provided by statute, a majority of those voting shall prevail in all other cases.

(Prior Code, § 201.05)

§ 31.06 ORDINANCES, RESOLUTIONS AND MOTIONS.

(A) *Ordinances, resolutions and motions.*

(1) Every proposed ordinance, repeal of an ordinance or amendment to an existing ordinance shall be presented in writing to the City Council at two separate Council meetings where the ordinance or amendment shall be read in full. A vote of the City Council may be taken relative to the ordinance or amendment upon completion of the second reading.

(2) Every resolution shall be presented in writing and shall be read in full before a vote is taken thereon, but no second reading of resolutions.

(3) All motions shall be stated in full before they are submitted to a vote by the presiding officer. They shall be recorded by title in the minutes by the Clerk-Treasurer.

(B) *Recording.* Every ordinance and resolution passed by the Council shall be signed by the Mayor and attested by the Clerk-Treasurer. Every ordinance shall be incorporated into the text or appendices of the code with the original passed version of the ordinance retained in an ordinance book in chronological order. Every resolution shall be filed in the resolution book.

(C) *Amendments and repeals.* Every ordinance or resolution repealing a previous ordinance or resolution or a section or subdivision thereof shall give the title of the ordinance or resolution to be repealed in whole or in part. No ordinance or resolution or section or subdivision thereof shall be amended by reference to title alone, but such an amending ordinance or resolution shall set forth in full each section or subdivision to be amended.

(Prior Code, § 201.06)

§ 31.07 AMENDMENT AND SUSPENSION OF RULES.

The rules for the conduct of Council meetings established by §§ 31.02 through 31.07 may be temporarily suspended by a majority vote of all Council members. Sections 31.01 through 31.07 shall not be repealed or amended except by majority vote of the whole Council after notice has been given at some preceding Council meeting.

(Prior Code, § 201.08)

CHAPTER 32: CITY ORGANIZATIONS

Section

General Provisions

- 32.01 Committees
- 32.02 Police Civil Service Commission

Fire Department

- 32.15 Established
- 32.16 Appointment
- 32.17 Fire Chief
- 32.18 Volunteer Fire Department attendance requirements

GENERAL PROVISIONS

§ 32.01 COMMITTEES.

(A) *Standing committees.*

(1) *Committees listed.*

(a) There shall be eight standing committees of the City Council,
namely:

1. Streets;
2. Liquor Control;
3. Parks and Recreation;
4. Beautification and Trees;
5. Public Safety;
6. Cable Television;
7. Tourism; and
8. Trust Fund Board.

(b) Each of the committees except the Trust Fund Board, the Board being governed by the ordinance establishing the fund, and Liquor Control Board, shall consist of one Council member and two non-Council members (or more as the Council shall so decide), and the committee members shall be appointed by the Council at the first meeting of each year or upon vacancy or term expiration. Any subject considered by the committees shall be presented to the Council with their recommendations for the Council's consideration.

(c) The Liquor Control Board shall consist of two Council members and the Police Chief with the liquor store manager as an advisory member.

(2) *Regulation of cable television rates.* The City Council delegates to the Cable Television Committee the ability to review proposed basic cable television rates submitted by the cable franchise holder operating within the city and to recommend to the Council the regulation of the rate to be charged in accordance with

all requisite statutes and rules. The city shall follow rules relating to cable rate regulation promulgated by the Federal Communications Commission in 47 C.F.R. subpart N.

(3) *Use of lodging tax proceeds.* Ten percent of the proceeds obtained from collection of lodging taxes shall be used in accordance with M.S. § 469.190, as it may be amended from time to time, to provide funding for the preservation, display and interpretation of tourist attractions, including, but not limited to, the mallet, caboose and jet fighter plane located within the city. The remaining balance of the proceeds obtained from the collection of taxes shall be used in accordance with M.S. § 469.190, as it may be amended from time to time, to provide funding to the Tourism Committee for the purpose of marketing and promoting the city.

(B) *Special committees.* The presiding officer of the Council at his or her discretion may refer certain problems falling outside of the jurisdiction of the aforementioned committees to special committees appointed by him or her and confirmed by the Council. The committees shall consist of at least one Council member. The reports of the special committees and their recommendations shall be forwarded to the full Council for their consideration.

(C) *Personnel committees.* There shall be established for the City Council and the City Public Utilities Commission two Personnel Committees which shall be standing committees of each body.

(1) *Council Personnel Committee.* The City Council shall, by majority vote of its members, select a member of the Council (to include the Mayor) to be the City Council's representative on the City Council Personnel Committee, which shall be a special standing committee. The term of the Council member on the Personnel Committee shall be one year, and there shall be no prohibition against successive terms on the committee by the same Council member; provided, that the Councilor so elected shall not be an employee of the city, any of its departments or subdivisions, or the City Public Utilities Commission. In addition to one member of the City Council, the Personnel Committee shall include the City Administrator and the City Attorney for a total of three members.

(2) *Public Utilities Commission (PUC) Personnel Committee.* The PUC shall, by majority vote of its members, select one member of the PUC to be the PUC's representative on the PUC Personnel Committee, which shall be a special standing committee. The term of the PUC member on the Committee shall be one year, and there shall be no prohibition against successive terms on the Committee by the same PUC Commissioner; provided, that the Commissioner so elected shall not be an employee of the city, any of its departments or subdivisions, or the PUC. In addition to one Commissioner, the PUC Personnel Committee shall include the City Administrator and the City Attorney for a total of three members.

(3) *Duties of Personnel Committees.* It shall be the duty of each of the respective Personnel Committees to perform the following functions and duties.

(a) Prior to the discussion of any complaint regarding an employee of the city or the PUC at a closed or open meeting of the public body employing the employee, the complaint, allegation or charge regarding that employee shall be processed in accordance with the enacted policies and procedures of the respective employer.

(b) Once a complaint, allegation or charge has been properly processed through the administrative policies and procedures, the complaint shall be reduced to writing and provided to the members of the appropriate Personnel Committee. The Committee shall meet and review the complaint, allegation or charge and if necessary, conduct any further investigation needed to determine the factual basis for the complaint, allegation or charge. If the complaint, allegation or charge involves either the PUC Commissioner, City Attorney or the City Administrator, those members of the respective Personnel Committee shall be removed from the Committee and replaced with a member of the Police Civil Service Commission, who shall serve as a member of the Committee.

(c) Upon conclusion of the Committee's consideration of the complaint, allegation or charge in question, the Committee shall forward a written report of its findings to either the PUC or the Council for its review. If, upon review of the report, the PUC or Council determines that further action in the form of discipline is warranted, the PUC or Council shall notify the involved employee in writing that discipline is being considered and will be discussed at the next meeting of the involved body. A copy of the letter shall be mailed to the employee's designated representative and to the city's labor attorney.

(d) The letter to the employee shall also state that, with the exception of supervisory personnel, consideration of discipline may be done at an open or closed meeting, at the employee's option. If the employee indicates he or she desires the meeting to be open, the body charged with discipline shall keep the meeting open. If the employee expresses no preference or desires the meeting closed, it shall be closed.

(e) In considering methods of discipline, the PUC and/or the Council shall follow the disciplinary process and procedures set forth in the union bargaining agreements, if applicable, or the policies and procedures enacted by the city or the PUC. Upon majority vote of the appropriate body, the employee may be disciplined as designated by the body.

(f) The Personnel Committees shall attempt to identify any and all pertinent issues, to include veteran's preference status of employees involved in the discipline process.

(4) *Applicability to police.* The process of discipline set forth in this section shall not be applicable to police officers employed by the city. Discipline of those employees shall be through the Police Civil Service Commission.

(Prior Code, § 201.07) (Ord. 02-05, passed 4-4-2005; Ord. 02-18, passed 6- -2018)

§ 32.02 POLICE CIVIL SERVICE COMMISSION.

The Police Civil Service Commission Rules and Regulations, copies of which are on file at the City Hall, are adopted and incorporated as part of this code of ordinances as fully as if set out at length herein.

(Policy passed 12-6-1993, amended 5-2-1994; approved 5-16-1994; approved 6-16-1997; approved 3-17-2008)

FIRE DEPARTMENT

§ 32.15 ESTABLISHED.

There is hereby established a Fire Department in the city, consisting of a Chief and not to exceed 25 volunteer firefighters, except as authorized by resolution of City Council.

(Prior Code, § 205.01) (Ord. 04-10, passed 1-3-2011)

§ 32.16 APPOINTMENT.

Firefighters and probationary firefighters shall be appointed by members of the Fire Department, subject to confirmation by the Council. Firefighters may be removed by the Council only for cause after notice and a hearing.

(Prior Code, § 205.02) (Ord. 04-10, passed 1-3-2011)

§ 32.17 FIRE CHIEF.

(A) *Appointment.* The Fire Chief shall be elected annually by the members of the Fire Department, subject to confirmation by the Council. He or she shall hold office for one year and until his or her successor is appointed and qualifies, except that he or she may be removed by the Council for cause after notice and a hearing.

(B) *Duties.* The Fire Chief shall be responsible for the proper maintenance and repair of all the fire apparatus and shall see that the apparatus are in suitable condition to attend a fire at any time. He or she shall have exclusive control of the apparatus at any fire and shall have exclusive command of the Fire Department at any fire. He or she shall be responsible for the proper training and discipline of the members of the Fire Department and may suspend any volunteer firefighter for refusal or neglect to obey orders, pending final action by the Council or discharge or discipline.

(C) *Records.* The Fire Chief shall keep in convenient form a record of all fires. The record shall include the time of the alarm, location of the fire, cause of the fire if known, type of building, name of owner and tenant, Department responding to the alarm and any other information as he or she may deem advisable or as may be required from time to time by the Council or the state's Insurance Department.

(Prior Code, § 205.03)

§ 32.18 VOLUNTEER FIRE DEPARTMENT ATTENDANCE REQUIREMENTS.

The Volunteer Fire Department attendance requirements, copies of which are on file at the City Hall, are adopted and incorporated as part of this code of ordinances as fully as if set out at length herein.

(Policy approved - -)

CHAPTER 33: CITY EMPLOYEES

Section

Clerk-Treasurer

- 33.01 Offices combined
- 33.02 Annual audit

CLERK-TREASURER

§ 33.01 OFFICES COMBINED.

Pursuant to M.S. § 412.591, as it may be amended from time to time, effective January 1, 1970, the offices and duties of Clerk and Treasurer are combined into one office to be known as the Clerk-Treasurer. The Clerk-Treasurer shall perform all duties assigned by statute or this code to the Clerk or Treasurer.
(Prior Code, § 203.01)

§ 33.02 ANNUAL AUDIT.

The Council shall provide for an annual audit of the city's financial affairs by the State Auditor or a public accountant in accordance with the minimum auditing procedures prescribed by the State Auditor.
(Prior Code, § 203.02)

CHAPTER 34: CITY POLICIES

Section

General Provisions

- 34.01 General records retention policy
- 34.02 Special assessment policy
- 34.03 Personnel policy
- 34.04 Respectful workplace policy

Clean Air Policy

- 34.20 Scope and intent
- 34.21 Tobacco products prohibited
- 34.22 Tobacco products prohibited; locations
- 34.23 Signage
- 34.24 Future intent

GENERAL PROVISIONS

§ 34.01 GENERAL RECORDS RETENTION POLICY.

The General Records Retention Policy, copies of which are on file at the City Hall, is adopted and incorporated as part of this code of ordinances as fully as if set out at length herein.

(Policy approval of Minnesota General Retention Schedule 6-25-1998, and adopted by reference, as amended from time to time.)

§ 34.02 SPECIAL ASSESSMENT POLICY.

The Special Assessment Policy, copies of which are on file at the City Hall, is adopted and incorporated as part of this code of ordinances as fully as if set out at length herein.

(Policy approved 11-7-2017)

§ 34.03 PERSONNEL POLICY.

The city's Personnel Policy, copies of which are on file at the City Hall, is adopted and incorporated as part of this code of ordinances as fully as if set out at length herein. (Prior Code, § 204) (Policy approved - -) (Ord. 02-05, passed 4-4-2005; Ord. 04-08, passed 8-18-2008; Ord. 05-10, passed 1-3-2011; Ord. 06-14, passed 12-15-2014; Ord. 02-16, passed 9- -2016; Ord. 03-18, passed 10-15-2018; Ord. 2-20, passed 5-4-2020)

§ 34.04 RESPECTFUL WORKPLACE POLICY.

The Respectful Workplace Policy, copies of which are on file at the City Hall, is adopted and incorporated as part of this code of ordinances as fully as if set out at length herein.

(Policy approved 3-18-2019)

CLEAN AIR POLICY

§ 34.20 SCOPE AND INTENT.

Pursuant to and in recognition of the purpose of M.S. § 144.412, as it may be amended from time to time, the State Clean Air Act, being M.S. §§ 116.01 et seq., as

they may be amended from time to time, the city desires to make the property owned and maintained by the city tobacco free wherever possible.
(Prior Code, § 202A.01) (Ord. 07-15, passed 1-19-2016)

§ 34.21 TOBACCO PRODUCTS PROHIBITED.

(A) No smoking or use of any tobacco-based products, to include pipes, cigars, cigarettes, snuff or similar substances, shall be permitted at any time in any building owned, operated, leased or maintained by the city.

(B) This prohibition shall include the smoking or use of any tobacco-based product within any motor vehicle owned, operated, leased or maintained by the city.
(Prior Code, § 202A.02) (Ord. passed - -; Ord. 07-15, passed 1-19-2016) Penalty, see § 10.99

§ 34.22 TOBACCO PRODUCTS PROHIBITED; LOCATIONS.

No smoking or use of any tobacco products, as set forth in § 34.21, shall be permitted at any time within City Hall, Street Department buildings, fairgrounds buildings, golf course club and the Fire Hall.
(Prior Code, § 202A.03) (Ord. passed - -; Ord. 07-15, passed 1-19-2016) Penalty, see § 10.99

§ 34.23 SIGNAGE.

The city shall conspicuously post signs indicating those areas designated as smoking or non-smoking in accordance with state law.
(Prior Code, § 202A.04) (Ord. 07-15, passed 1-19-2016)

§ 34.24 FUTURE INTENT.

It is the intent of this subchapter to provide for future regulation of the use of tobacco upon property owned and maintained by the city with the eventual result of designating all city property to be tobacco free.
(Prior Code, § 202A.05) (Ord. 07-15, passed 1-19-2016)

CHAPTER 35: FINANCE AND REVENUE

Section

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- 35.001 Debt Service Fund
- 35.002 Construction Fund
- 35.003 Fire Escrow Account

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- 35.111 Exemption certificates
- 35.112 Presumption of purpose of sale
- 35.113 Collection of sales and use tax at time of sale
- 35.114 Agent of retailer
- 35.115 Effective date of tax; transitional sales
- 35.116 Collection and enforcement
- 35.117 Tax clearance; issuance of license
- 35.118 Copy of notice
- 35.119 Deposit of revenues; costs of administration; termination of tax
- 35.120 Agreement with the Commissioner

Food and Beverage Tax

- 35.130 Authority
- 35.131 Definitions
- 35.132 Imposition of tax
- 35.133 Separate statement; collection from purchaser advertising no tax; minimum uniform tax collection methods
- 35.134 Exemption certificates
- 35.135 Presumption of purpose of sale
- 35.136 Collection of tax at time of sale
- 35.137 Agent of retailer
- 35.138 Collection and enforcement
- 35.139 Tax clearance issuance of license
- 35.140 Copy of notice

- 35.999 Penalty

FUNDS AND ACCOUNTS

§ 35.001 DEBT SERVICE FUND.

Pursuant to M.S. § 475.61, as it may be amended from time to time, there is hereby created a Debt Service Fund for the purpose of payment of principal and interest on obligations or to repay advances from other funds for those purposes. All taxes, special assessments and other revenues pledged to the repayment of obligations shall be appropriated to the Debt Service Fund. The Debt Service Fund shall be administered in accordance with M.S. Ch. 475, as it may be amended from time to time, M.S. Ch. 429, as it may be amended from time to time, and other provisions of statute applicable to debt service funds.
(Prior Code, § 206.01)

§ 35.002 CONSTRUCTION FUND.

Pursuant to M.S. § 429.091, subd. 4, as it may be amended from time to time, there is hereby created a Construction Fund for the purpose of defraying expenses of improvements to be financed wholly or partly from special assessments, and payment of principal and interest due upon obligations issued therefor prior to completion, and payment of all costs of the improvements so financed. The proceeds from the sale of obligations and other moneys appropriated for each improvement shall be credited to the Construction Fund. Any balance of proceeds remaining therein may be used to pay the cost in whole or in part of any other improvement to be financed pursuant to M.S. Ch. 429, as it may be amended from time to time. A separate account shall be maintained in the Construction Fund for each improvement, and when the total cost thereof has been paid, all subsequent collections of special assessments levied for the improvement shall be credited and paid into the Debt Service Fund as provided by M.S. § 475.61, as it may be amended from time to time, and § 35.001.
(Prior Code, § 206.02)

§ 35.003 FIRE ESCROW ACCOUNT.

(A) Pursuant to M.S. § 65A.50, as it may be amended from time to time, the City Council does hereby establish an escrow account to receive a portion of insured real property fire or explosion settlement proceeds as prescribed by the statute.

(B) The city intends to uniformly apply M.S. § 65A.50, as it may be amended from time to time, with respect to all property located within the city.

(C) The city is authorized to proceed to establish the escrow account as provided for in the statute.

(D) The city shall give the required written notification to the Commission of Commerce of the city's intention to apply M.S. § 65A.50, as it may be amended from time to time, and the establishment of the escrow account.

(E) The city is authorized to execute affidavits certifying the violation of health and safety standards as required by M.S. § 65A.50, subd. 3, as it may be amended from time to time.

(F) The city is authorized to receive reasonable proof that damaged or destroyed portions of an insured structure are repaired, replaced or removed or that an

insured has entered into a contract for repair, replacement or removal of the damaged portions as required by M.S. § 65A.50, subd. 8, as it may be amended from time to time.

(Res. 04-14, passed 2-3-2014)

UNCLAIMED PROPERTY

§ 35.015 DEFINED.

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

UNCLAIMED PROPERTY. Any money or personal property, except animals and motor vehicles, lawfully coming into the possession of the city and remaining unclaimed by the owner.

(Prior Code, § 207.01)

§ 35.016 PROCEDURE.

(A) *General.* The Chief of Police shall make a reasonable and diligent effort to find the owner of any unclaimed property and restore the same to him or her.

(B) *Motor vehicles.* Abandoned motor vehicles shall be disposed of as provided by M.S. Ch. 168B, as it may be amended from time to time.

(C) *Animals.* Abandoned animals shall be disposed of as provided by §§ 90.07 and 90.08 of this code of ordinances.

(Prior Code, § 207.02)

§ 35.017 FOUND PROPERTY.

A receipt shall be issued to any person who finds lost or abandoned property or money and delivers it to the custody of the city. The person may indicate in writing that he or she wishes to assert a claim to the property or money as a finder. If the finder so indicates and the property or money remains unclaimed by the owner for 90 days, the property or money shall be delivered to the finders.

(Prior Code, § 207.03)

§ 35.018 PERISHABLE OR DANGEROUS PROPERTY.

Any unclaimed property which is perishable or which would lose the greater part of its value by being retained for 90 days or which is determined by the Chief of Police to be dangerous shall be disposed of at the discretion of the Chief of Police in the manner deemed appropriate by him or her.

(Prior Code, § 207.04)

§ 35.019 MONEY.

Any money which is not claimed by the owner within 90 days or by a finder pursuant to § 35.017 or which was seized from illegal gambling shall be deposited in the city's General Fund.

(Prior Code, § 207.05)

§ 35.020 PROPERTY SEIZED AS EVIDENCE.

Any property seized as evidence shall, when no longer needed as evidence, be returned to the owner unless otherwise subject to lawful detention. The property which is otherwise subject to lawful detention shall be destroyed or otherwise disposed of as directed by the Court.

(Prior Code, § 207.06)

§ 35.021 DISPOSAL.

(A) *City use.* Any unclaimed property for which no other manner of disposal is provided by §§ 35.015 through 35.020 and which is not claimed by the owner within 90 days may be appropriated to city use upon approval of the appropriation by the Council.

(B) *Sale.* Any property described in division (A) above which is not appropriated to the city use shall be sold by the Chief of Police to the highest bidder at public auction. Notice shall be published for two successive weeks of the time, place and manner of sale. The notice shall also describe the property to be sold.

(C) *Proceeds.* The proceeds of a sale of unclaimed property shall be deposited in the city General Fund. A record shall be made of the sale price of each item sold, and the sale price shall be paid to the former owner if claim is made within six months of the sale and satisfactory proof of ownership is presented.

(D) *Unsold property.* Any unclaimed property remaining unsold after public auction shall be disposed of as directed by the Council.

(Prior Code, § 207.07)

ESCROW DEPOSITS

§ 35.035 INTENT.

Certain licensed and permitted activities carried on in the city require the assistance of the City Engineer, City Attorney, City Planner or other city personnel. As these activities primarily benefit private persons rather than the city as a whole, it is

appropriate that the cost of these services be borne by those benefitting thereby. This subchapter is intended to provide a method whereby this end will be furthered.
(Prior Code, § 208.01)

§ 35.036 ESCROW DEPOSIT REQUIRED.

Applications for subdivision approval, rezonings, conditional use permits, planned unit developments, zoning variances, sewer connection permits, liquor licenses, building permits and other municipal considerations may require a cash deposit which shall be placed in an applicant's escrow account in an amount sufficient to pay all engineering, legal and planning fees incurred by the city, and any other costs as may be made the applicant's responsibility in connection with the application and the supervision, inspection and investigation of the permitted activity. The deposit shall be held in the account and shall be credited to the applicant making the deposit. All engineering, legal, planning fees and any other costs as may be made the applicant's responsibility incurred in connection with an application shall be charged to the applicant's escrow account and credited to the city.
(Prior Code, § 208.02)

§ 35.037 FEE SCHEDULE.

The Council shall establish fees for services rendered by the City Attorney, City Engineer, City Planner and other city personnel. The fee schedule shall be provided to all persons making applications listed in § 35.036 upon request.
(Prior Code, § 208.03)

§ 35.038 INDIVIDUAL FEES.

Based on the fee schedule adopted pursuant to § 35.037, the Clerk-Treasurer shall determine the amount of the escrow deposit required after consultation with the City Attorney, City Engineer, City Planner or other city personnel whose services may be required. All time, services and materials to be billed to an escrow account shall be itemized.
(Prior Code, § 208.04)

§ 35.039 ENFORCEMENT.

(A) *Application.* The application listed in § 35.036 shall not be accepted or processed by the city unless accompanied by an escrow deposit as provided in this subchapter.

(B) *Deficits.* If at any time it appears that a deficit will occur in any escrow account, the Clerk- Treasurer may then require an additional deposit in the escrow

account sufficient to cover the additional expenses. Failure to make additional deposits or to pay to the city money owed for legal, engineering or other services for which the applicant is by ordinance made responsible in connection with an application in § 35.036 shall be grounds for denial or revocation of the permit or license or cessation of work on a particular project. The permit or license shall be revoked only after a hearing preceded by ten days' written notice.
(Prior Code, § 208.05)

§ 35.040 REFUND.

Any money remaining in an applicant's escrow account after payment of all required engineering, legal and other fees shall be returned to the applicant.
(Prior Code, § 208.06)

PROCTOR TRUST FUND

§ 35.055 RECITALS.

The City Council, in full recognition of the needs of the citizens of the city business development, recreational and health activities for the benefit of the public, determines that the establishment of a Public Charitable Trust Fund for the purpose of receiving and administrating funds for business development, recreational and health purposes may provide substantial benefits to the citizens of the city and substantially improve the quality of life for the residents of the city. The City of Proctor Business Development, Recreation and Health Public Charitable Trust Fund is in the public interest.
(Prior Code, § 1004.01)

§ 35.056 ESTABLISHMENT OF TRUST FUND.

There is hereby established a perpetual and permanent public charitable trust fund for the city for recreational, business development and health to be officially called and known as the City of Proctor Business Development, Recreation and Health Public Charitable Trust Fund, hereinafter referred to as the "Trust Fund".
(Prior Code, § 1004.02)

§ 35.057 PURPOSES.

The purpose of the Trust Fund is exclusively to receive and to administer funds for business development, recreational and health purposes for the benefit of the residents of the city; and to that end, to take and hold by bequest, devise, gift, grant,

purchase, lease or otherwise any property, real, personal, tangible or intangible, or any undivided interest therein, without limitation as to amount or value; to sell, convey or otherwise dispose of any such property and to grant, loan, invest, reinvest or deal with the principal or the income thereof in a manner as, in the judgment of the Board of Trustees of the Fund, will best promote the purposes of the Trust Fund.
(Prior Code, § 1004.03)

§ 35.058 ESTABLISHMENT OF BOARD OF TRUSTEES.

There shall be and hereby is established a Board of Trustees for the purposes of administering the funds of the Trust Fund in accordance with the purposes herein set forth. The Board of Trustees shall consist of five persons, as follows: the Mayor of the city; the City Administrator; and three other members appointed by the City Council; one of whom shall be a member of the banking profession to the extent practicable, one of whom shall be a member of the city business community to the extent practicable, and one of whom shall be a current member of the City Park and Recreations Board or Commission to the extent practicable. The Mayor and the City Administrator shall serve on the Board of Trustees so long as they hold public office. The three remaining members of the Board of Trustees shall each serve on the Board for terms of one, two and three years respectively, and thereafter each member and his or her successor in office shall serve for three-year terms. No member shall serve on the Board for more than nine consecutive years. The City Council may, by resolution, require that the members be bonded in an amount determined by the Council in its discretion at the sole expense of the City. The City Attorney shall be the designated attorney for the Board of Trustees.

(Prior Code, § 1004.04)

§ 35.059 POWERS OF BOARD OF TRUSTEES.

The Board of Trustees shall have the power and authority to do any act or thing incidental to or connected with the foregoing purposes or in advancement thereof.

(Prior Code, § 1004.05)

§ 35.060 CITY SHALL BE TRUSTEE OF FUNDS; ACCOUNTING.

The city, a municipal corporation, shall be at all times considered the Trustee of all funds received by the Trust Fund, to be administered by the city by and through the Board of Trustees as above established. An annual accounting of all funds received by the Trust Fund and paid out therefrom, the income thereon and the expenses relating to the Trust Fund shall be included in the annual city audit. The city shall at all times be considered the owner of all funds received by the Trust Fund, to be held in trust for the uses and purposes hereinafter stated and described.

(Prior Code, § 1004.06)

§ 35.061 LIMITATION OF POWER OF BOARD OF TRUSTEES.

The Board of Trustees shall not engage in any activities, acts or actions which would make any investments of the funds of the Trust Fund in any manner subject to tax under 26 U.S.C. § 49 or any like or corresponding provisions of any subsequent federal tax laws; and the Board shall not engage in any activities, acts or actions which might destroy the tax deductibility of gifts, bequests or devises by donors to the Trust Fund, it being the intent of the City Council that all bequests, devises and gifts made and transferred to the Trust Fund by any donor shall be deductible for income tax and death tax purposes. If required, the Trust, through its Board, shall apply for charitable status for tax purposes.

(Prior Code, § 1004.07)

§ 35.062 LOANS AND GRANTS FOR BUSINESS DEVELOPMENT, HEALTH CARE IMPROVEMENT OR RECREATIONAL DEVELOPMENT.

(A) Moneys received, created by investment, sale or otherwise, or held and maintained by the Trust for business development, health care improvement or recreational development may be disbursed by loans or grants made by the Board of Trustees to developers, business owners, non-profit corporations or other legal entities or individuals for the purposes of business development, health care improvement or recreational development; provided, any project receiving loan or grant proceeds by the Trustees from the Trust must be limited to site improvements, building remodeling, building repairs, new construction or building renovation to completed within the corporate city limits.

(B) The Board of Trustees shall determine the risk, potential need and feasibility of each project submitted to it for loan or grant consideration and shall establish bylaws as to the loan application process to be followed, the rate of interest (if any) to be charged borrowers, the amount of collateral (if any) required, and all other reasonable and commercially accepted criteria for accepting or rejecting the loan or grant applications.

(C) The Board of Trustees to meet as frequently as the bylaws of that body require. Meetings of the Board shall be held in the City Council chambers of the city.

(D) Nothing in this section shall limit the ability of the Board to make, establish and formulate further bylaws for the efficient conduct of its business; provided, any vote of the Board shall be based upon a four-fifths majority vote of all Board members.

(Prior Code, § 1004.08)

§ 35.063 DISBURSEMENT ACCOUNTS.

(A) There shall be established four separate disbursement accounts by the Board of Trustees, one to be entitled "Business Development", one to be entitled "Health", one to be entitled "Recreation" and one to be entitled "General Fund". The purpose of the four accounts shall be to allow donors to specify the purpose for which

their gift is given, and those gifts designated by the donor for one of the three specific purpose accounts shall be deposited in the account.

(B) Moneys, property or other donations given and held for those specific purposes may be loaned, granted, expended or otherwise utilized by the Board only for the specific purpose delineated.

(C) All gifts, contributions or the like of money or other property given without specific intent, purpose or designation shall be held by the Board of Trustees in the General Fund account to be disbursed for any purpose allowed under this subchapter. (Prior Code, § 1004.09)

§ 35.064 BOOKS AND RECORDS OF THE TRUST FUND; LOCATION THEREOF.

All books, records, statements of account and any and all other information relating to the Trust Fund and administration thereof shall be permanently located at the office of the City Administrator, and shall at all times be open for inspection by the public.

(Prior Code, § 1004.10)

§ 35.065 TRANSFERS TO TRUST FUND; HOW MADE.

Gifts, bequests, devises or other transfers to the Trust Fund may be accomplished by making checks, drafts or bequests payable to “City of Proctor Business Development, Recreation, Health and Public Charitable Trust General Fund” or to any of the three specific intent accounts established hereunder. All gifts, bequests and transfers from any third party or parties shall be acknowledged by the Board of Trustees by means of a resolution of the Board accepting the gift or bequest for the purpose hereinbefore set forth. Transfers from the Trust shall be by check or draft only. (Prior Code, § 1004.11)

§ 35.066 MEMBERS OF BOARD.

Members of the Board of Trustees are subject to removal from the Board of Trustees without cause by majority vote of the City Council.

(Prior Code, § 1004.12)

LODGING TAX

§ 35.080 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The City of Proctor, Minnesota, acting by or through its City Council.

LODGER. The person obtaining lodging from an operator.

LODGING. The furnishing for a consideration of lodging at a hotel, motel, apartment, tourist court, municipal campground, bed and breakfast or resort, other than the renting or leasing of a premises for a continuous period of 30 days or more to the same occupant. The furnishing of rooms owned by religious, educational or non-profit organizations for self-sponsored activities shall not constitute **LODGING** for purposes of this chapter.

OPERATOR. Any person who has charge, care or control of a building in the city, or part thereof, in which dwelling units or rooming units are let, whether in the capacity of owner, lessee, sublessee, licensee or any other capacity.

PERSON. Includes all firms, partnerships, associations, corporations and natural persons.

RENT. The total consideration valued in money charged for lodging, whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.

(Prior Code, § 1100.01)

§ 35.081 IMPOSITION OF TAX.

Pursuant to M.S. § 469.190, as it may be amended from time to time, there is hereby imposed a tax of 3% on the rent charged by an operator for providing lodging to any person. The tax shall be stated and charged separately and shall be collected by the operator from the lodger. The tax collected by the operator shall be a debt owed by the operator to the city and shall be extinguished only by payment to the city. In no case shall the tax imposed by this subchapter upon an operator exceed the amount of tax which the operator is authorized and required by this subchapter to collect from a lodger.

(Prior Code, § 1100.02) (Ord. 04-11, passed 11-21-2011)

§ 35.082 COLLECTIONS.

Each operator shall collect the tax imposed by this subchapter at the time the rent is paid. The tax collection shall be deemed to be held in trust by the operator for the city. The amount of tax shall be separately stated from the rent charged for the lodging, and those persons paying the tax shall receive a receipt of payment from the operator.

(Prior Code, § 1100.03) Penalty, see § 35.999

§ 35.083 EXEMPTIONS.

An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the city to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected, and a claim shall be made in

writing and under penalty of perjury on forms provided by the city. All claims shall be forwarded to the city when the returns and collections are submitted as required by this subchapter.

(Prior Code, § 1100.04)

§ 35.084 ADVERTISING NO TAX.

It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than \$0.01 shall be considered an additional cent.

(Prior Code, § 1100.05) Penalty, see § 35.999

§ 35.085 PAYMENTS AND RETURNS.

(A) The taxes imposed by this subchapter shall be paid by the operator to the city monthly not later than 20 days after the end of the month in which the taxes were collected. At the time of payment, the operator shall submit a return upon forms and containing information as the city may require.

(B) The return shall contain the following minimum information:

- (1) The total amount of rent collected for lodging during the period covered by the return;
- (2) The total amount of exceptions/exemptions;
- (3) The amount of tax required to be collected and due for the period;
- (4) The signature of the person filing the return or that of his or her agent duly authorized in writing;
- (5) The period covered by the return;
- (6) The amount of uncollectible rental charges subject to the lodging tax; and
- (7) A certification of accuracy attested to by the person signing the form for submission to the city.

(C) The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this subchapter previously paid as a result of any transaction the consideration for which became uncollectible.

(Prior Code, § 1100.06)

§ 35.086 EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS.

The city or its duly authorized representatives shall, after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its

correctness. The tax computed and the basis of the examination shall be the tax to be paid. If the tax due is found to be greater than that paid, the excess shall be paid to the city within ten days after receipt of a notice thereof given either personally or sent by certified mail, return receipt requested, to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the city within ten working days after determination of the refund. (Prior Code, § 1100.07)

§ 35.087 REFUNDS.

Any person may apply to the city for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one year from the date the return was due to be filed. The city shall examine the claim and make and file written findings denying or allowing the claim in whole or in part and shall mail a notice thereof by certified mail, return receipt requested, to the person at the address stated upon the return. If the claim is allowed in whole or in part, the city shall credit the amount of the allowance against any taxes due under this subchapter from the claimant and the balance of the allowance, if any, shall be paid by the city to the claimant. (Prior Code, § 1100.08)

§ 35.088 FAILURE TO FILE A RETURN.

(A) (1) If any operator required by this subchapter to file a return shall fail to do so within the time prescribed or shall make, willfully or otherwise, an incorrect, false or fraudulent return, the operator shall, upon written notice and demand, file the return or corrected return within five days of receipt of the notice and shall at the same time pay any tax due on the basis thereof. If the person shall fail to file the return or corrected return, the entity shall make a return or corrected return for the person based upon the knowledge or information as the city can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by the return) shall be paid within five days of the receipt of written notice and demand for the payment.

(2) Any return or assessment made by the city shall be prima facie correct and valid, and the burden of proving to the contrary rests with any person in any action or proceeding in respect thereto.

(B) If any portion of a tax imposed by this subchapter, including penalties thereon, is not paid within 30 days after it is required to be paid, the city may institute a legal action as it, in its sole discretion, may deem appropriate to cover the amount due plus interest penalties, the costs and disbursements of any action.

(C) Upon a showing of good cause, the city may grant an operator one 30-day extension of time within which to file a return and make payment of taxes as required by the subchapter provided that interest during the period of extension shall be added to the taxes due at the rate of 8% per annum.

(Prior Code, § 1100.09)

§ 35.089 ADMINISTRATION OF TAX.

The city shall administer and enforce the assessment and collection of the taxes imposed by this subchapter. The city shall cause to be prepared blank forms for the returns and other documents required by this subchapter and shall distribute the same throughout the city. Failure to receive or secure forms and documents shall not relieve any person from any obligation required of him or her under this subchapter.

(Prior Code, § 1100.11)

§ 35.090 EXAMINE RECORDS.

Persons acting on behalf of the city and authorized in writing by the city may examine the books, papers and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this subchapter. Every operator is directed and required to give to the city the means, facilities and opportunity during regular city business hours for the examinations and investigations as are hereby authorized.

(Prior Code, § 1100.12)

§ 35.091 VIOLATIONS.

Any person who shall willfully fail to make a return by this subchapter or who shall fail to remit the taxes collected or any penalty or interest imposed by this subchapter after written demand for the payment or who shall refuse to permit the city's authorized agents to examine the books, records and papers under his or her control or who shall willfully make any incomplete, false or fraudulent return shall be guilty of a misdemeanor.

(Prior Code, § 1100.13) Penalty, see § 35.999

§ 35.092 USE OF PROCEEDS.

Ninety-five percent of the proceeds obtained from the collection of taxes pursuant to this subchapter shall be used in accordance with M.S. § 469.190, as it may be amended from time to time, for the purpose of marketing and promoting the city as a tourist center. The city shall retain up to 5% of the proceeds obtained hereunder to defray the costs and expenses of collection and administration of the tax.

(Prior Code, § 1100.14)

§ 35.093 APPEALS.

(A) Any operator aggrieved by any notice, order or determination made by the city under this subchapter may file a petition for review of the notice, order or determination. The petition shall contain the name of petitioner, the petitioner's address and the location of the lodging subject to the notice, order or determination.

(B) The petition for review shall be filed with the city within ten days after the notice, order or determination for which review is sought has been mailed to or served upon the person requesting review.

(C) Upon receipt of the petition, the City Administrator shall set a date for a hearing and give the petitioner at least five days' prior written notice of the date, time and place of the hearing.

(D) At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn.

(E) The hearing shall be conducted by the City Council or its authorized representative, and it shall make written findings of fact and conclusions based upon the applicable section of this subchapter and the evidence presented. The City Council or its authorized representative may affirm, reverse or modify the notice, order or determination which is subject of the appeal.

(Prior Code, § 1100.15)

§ 35.094 TERM.

The three-year term of this subchapter shall begin on its effective date and shall automatically be extended for subsequent three-year periods unless it is rescinded by City Council action.

(Prior Code, § 1100.16)

SALES AND USE TAX

§ 35.105 AUTHORITY.

The Minnesota Legislature has, by Laws of Minnesota for 2017, 1st Special Session, Chapter 1, Article 5, Section 11, Laws of 1999, Chapter 243, Article 4, Section 18, Subdivision 1 as amended by Laws of 2008, Chapter 366, Article 7, Section 12 by Laws of 2010, Chapter 389, Article 5, Section 1 and 2, authorized the city to impose a local sales and use tax to provide revenues to pay the costs of collecting and administering the tax to the State Commissioner of Revenue and to finance the capital and administrative costs related to the funding of designated projects as in Minnesota Laws of 2017, 1st Special Session, Chapter 1, Article 5, Section 11, Laws of 1999, Chapter 243, Article 4, Section 18, Subdivision 1 as amended by Laws of 2008, Chapter 366, Article 7, Section 12 by Laws of 2010, Chapter 389, Article 5, Section 1 and 2, and approved by the voters at the November 4, 2014 election.

(Prior Code, § 1200.01) (Ord. 05-17, passed 6-19-2017; Ord. 02-19, passed 8-19-2019)

§ 35.106 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The City of Proctor.

COMMISSIONER. The Commissioner of Revenue for the state or the person to whom the Commissioner has delegated functions.

DESIGNATED PROJECTS. Capital improvements to include bikeways, trails, parks and recreation, public utilities to include water, sanitary sewer, storm sewer, and electric as authorized by the Minnesota Legislature in Laws of Minnesota for 2017, 1st Special Session, Chapter 1, Article 5, Section 11, Laws of 1999, Chapter 243, Article 4, Section 18, Subdivision 1 as amended by Laws of 2008, Chapter 366, Article 7, Section 12 and Laws of 2010 Chapter 389, Article 5, Sections 1 and 2 and approved by the voters at the November 4, 2014 referendum.

STATE SALES AND USE TAX LAWS AND RULES. Those provisions of the state revenue laws applicable to state sales and use tax imposition, administration, collection, and enforcement, including M.S. Ch. 270C, 289A, 297A, and Minnesota Rules, Ch. 8130, as they may be amended from time to time.

(Prior Code, § 1200.02) (Ord. 05-17, passed 6-19-2017; Ord. 02-19, passed 8-19-2019)

§ 35.107 LOCAL SALES AND USE TAX IMPOSED; AMOUNT OF TAX; COORDINATION WITH STATE SALES AND USE TAX LAWS AND RULES.

A local sales tax is imposed in the amount of 1% on the gross receipts from sales at retail sourced within the city limits which are taxable under the state sales and use tax laws and rules. A local use tax is imposed in the amount of 1% on the storage, use, distribution or consumption of goods or services sourced within the city limits which are taxable under the state sales and use tax laws and rules. All of the provisions of the state sales and use tax laws and rules apply to the local sales and use tax imposed by this subchapter. The local sales and use tax imposed by this subchapter shall be collected and remitted to the Commissioner on any sale or purchase when the state sales tax must be collected and remitted to the Commissioner under the state sales and use tax laws and rules and is in addition to the state sales and use tax.

(Prior Code, § 1200.03) (Ord. 05-17, passed 6-19-2017; Ord. 02-19, passed 8-19-2019)

§ 35.108 PROCEEDS.

(A) The proceeds of the city sales and use tax shall be used in the discretion of the City Council for the projects approved by the voters at the November 4, 2014 general election.

(B) The approved projects are:

(1) Capital improvement to include sidewalks, bikeways and trails;

- (2) Parks and recreation; and
- (3) Public utilities, including water, sanitary sewer, storm sewer and electric.

(C) All funds not used to pay collection and administrative costs of the city sales and use tax must be used for the projects listed in division (B) above.
(Ord. 05-17, passed 6-19-2017)

§ 35.109 BONDING AUTHORITY.

(A) In accordance with the authority provided by the Act, the city may issue bonds under M.S. Ch. 475, as it may be amended from time to time, to finance all or a portion of the costs of the facilities authorized by the Act and identified in § 35.108. The aggregate principal amount of bonds issued under this section may not exceed those amounts described in § 35.116, plus an amount to be applied to the payment of the costs of issuing the bonds. The bonds may be paid from or secured by any funds available to the city, including the city sales and use tax authorized by the Act and this subchapter. The issuance of bonds under this section is not subject to M.S. §§ 275.60 and 275.61, as they may be amended from time to time.

(B) The bonds are not included in computing any debt limitation applicable to the city, and any levy of taxes under M.S. § 475.61, as it may be amended from time to time, to pay principal and interest on the bonds is not subject to any levy limitation. A separate election to approve the bonds under M.S. § 475.58, as it may be amended from time to time, is not required.
(Ord. 05-17, passed 6-19-2017)

§ 35.110 SEPARATE STATEMENT; COLLECTION FROM PURCHASER ADVERTISING NO TAX; MINIMUM UNIFORM TAX COLLECTION METHODS.

The city sales and use tax shall be stated and charged separately from the sales price or charge for service insofar as practical, and should be a debt from the purchaser to the seller recoverable at law in the same manner as other debts. In computing the tax to be collected as a result of any transaction, any amount of tax less than one-half of one cent may be disregarded and amounts of tax one-half cent or more may be considered an additional cent. If the sales price of any sale at retail is \$0.99 or less, no tax shall be collected.

(Prior Code, § 1200.04) (Ord. 05-17, passed 6-19-2017)

§ 35.111 EXEMPTION CERTIFICATES.

An exemption certificate taken in good faith from a purchaser to the effect that the property purchased is for resale or that the sale is otherwise exempt from application of the city sales and use tax will conclusively relieve the retailer from collecting and remitting the tax. A person who has obtained from the Commissioner an

exemption certificate pursuant to M.S. Ch. 297A, as it may be amended from time to time, may use the exemption certificate for the purposes of the city sales and use tax. (Prior Code, § 1200.05) (Ord. 05-17, passed 6-19-2017)

§ 35.112 PRESUMPTION OF PURPOSE OF SALE.

For the purpose of the proper administration and enforcement of § 35.107, it shall be presumed that all retail sales for delivery in the city are for storage, use or other consumption in the city until the contrary is established. (Prior Code, § 1200.06) (Ord. 05-17, passed 6-19-2017)

§ 35.113 COLLECTION OF SALES AND USE TAX AT TIME OF SALE.

(A) Any retailer making deliveries within the city, any retailer maintaining a place of business in the city, or any other retailer otherwise doing business within the city, upon making sales or any items described in § 35.107 which are not exempted from the sales and use tax and which are to be delivered or caused to be delivered within the city to the purchaser, shall at the time of making those sales, collect the sales and use tax from the purchaser. The tax collected by such retailer shall be remitted to the Commissioner on behalf of the city.

(B) Any retailer required to collect the city sales and use tax and remit the tax to the Commissioner pursuant to this section shall register with the Commissioner and provide any other information as the Commissioner may require. (Prior Code, § 1200.07) (Ord. 05-17, passed 6-19-2017)

§ 35.114 AGENT OF RETAILER.

When in the opinion of the Commissioner it is necessary for the efficient administration of the city sales and use tax, the Commissioner may regard any salesperson, representative, trucker, peddler or canvasser as the agent of the dealer, distributor, supervisor, employer or other person under whom the salesperson, representative, trucker, peddler or canvasser operated or from whom the tangible property is being sold is obtained, and may regard the dealer, distributor, supervisor, employer or other person as a retailer for the purposes of this subchapter. (Prior Code, § 1200.08) (Ord. 05-17, passed 6-19-2017)

§ 35.115 EFFECTIVE DATE OF TAX; TRANSITIONAL SALES.

(A) Except as otherwise provided herein, the local sales and use tax imposed by this subchapter shall apply to sales and purchases made on or after April 1, 2000 and October 1, 2017.

(B) The local sales and use tax imposed by this subchapter shall not apply to:

(1) The gross receipts from retail sales or leases of tangible personal property made pursuant to a bona fide written contract, which unconditionally vests the rights and obligations of the parties thereto, provided that such contract was enforceable prior to April 1, 2000 and October 1, 2017, and that delivery of the tangible personal property subject thereto is made on or before April 1, 2000 and October 1, 2017;

(2) The gross receipts from retail sales made pursuant to a bona fide lump sum or fixed price construction contract, which unconditionally vests the rights and obligations of the parties thereto and which does not make provision or allocation of future taxes, provided that such contract was enforceable prior to April 1, 2000 and October 1, 2017, and that delivery of the tangible personal property used in performing such construction contract is made before January 1, 2001 and June 1, 2018;

(3) The purchase of taxable services, including utility services, if the billing period includes charges for services furnished before and after April 1, 2000 and October 1, 2017, but the local sales and use tax imposed by this chapter shall apply on the first billing period not including charges for services furnished before April 1, 2000 and October 1, 2017; and

(4) Lease payments for tangible personal property and motor vehicles that includes a period before and after April 1, 2000 and October 1, 2017, but the local sales and use tax imposed by this subchapter shall apply on a prorated basis to lease payment amounts attributable to that portion of the lease payment period on or after April 1, 2000 and October 1, 2017 and on the entire lease payment for all lease payment periods thereafter.

(Prior Code, § 1200.10) (Ord. 05-17, passed 6-19-2017; Ord. 02-19, passed 8-19-2019)

§ 35.116 COLLECTION AND ENFORCEMENT.

The city sales and use tax imposed by the city pursuant to this subchapter shall be subject to the same interests, penalties and other rules as are applicable to the state general sales and use tax imposed by M.S. Ch. 289A and M.S. Ch. 297A, as they may be amended from time to time. The city sales and use tax imposed by the city pursuant to this subchapter may be collected by the state on behalf of the city as provided by an appropriate agreement with the State Commissioner of Revenue.

(Prior Code, § 1200.11) (Ord. 05-17, passed 6-19-2017)

§ 35.117 TAX CLEARANCE; ISSUANCE OF LICENSE.

(A) The city may not issue or renew a license for the conduct of a trade or business in the city if the Commissioner notified the licensing division of the city that the applicant owes delinquent city taxes as provided in this subchapter, or penalties or interest due on such taxes.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. An individual if the license is issued to or in the name of an individual or the corporation or partnership if the license is issued to or in the name of a corporation or partnership.

CITY TAXES. Includes sales and use taxes as provided in this subchapter. Penalties and interest are penalties and interest due on taxes included in this definition.

DELINQUENT TAXES. Does not include a tax liability if:

(a) An administrative or court action which contests the amount of or validity of a tax liability has been filed or served;

(b) The appeal period to contest tax liability has not expired; or

(c) The applicant has entered into a payment agreement and is current with the payments.

(C) A copy of the notice of delinquent taxes given to the licensing division of the city shall also be sent to the applicant taxpayer. In the case of renewal of a license, if the applicant requests in writing, within 30 days of the receipt of the notice of hearing, then, a contested hearing shall be held under the same procedures as provided in M.S. Ch. 270C, as it may be amended from time to time, for the state sales and use tax imposed under M.S. Ch. 297A, as it may be amended from time to time, provided further that if a hearing must be held on the state sales and use tax, hearings may be combined.

(Prior Code, § 1200.12) (Ord. 05-17, passed 6-19-2017; Ord. 02-19, passed 8-19-2019)

§ 35.118 COPY OF NOTICE.

A copy of the notice of delinquent taxes given to the city shall also be sent to the applicant taxpayer. In the case of renewal of a license, if the applicant requests a hearing in writing, within 30 days of the receipt of the notice of delinquent taxes, then a contested case hearing shall be held by the Commissioner under the same procedures as provided in M.S. Ch. 270C, as it may be amended from time to time, for the state sales and use tax imposed under M.S. Ch. 297A, as it may be amended from time to time, provided that if a hearing must be held on the state sales and use tax, hearings may be combined.

(Prior Code, § 1200) (Ord. 05-17, passed 6-19-2017)

§ 35.119 DEPOSIT OF REVENUES; COSTS OF ADMINISTRATION; TERMINATION OF TAX.

(A) All of the revenues, interest, and penalties derived from the local sales and use tax imposed by this chapter collected by the Commissioner and remitted to the city shall be deposited by the City Finance Director in the city treasury and shall be credited to the fund established to pay the costs of collecting the local sales and use tax imposed by this chapter and to finance the capital and administrative costs directly related to completing the designated projects.

(B) The local sales and use tax imposed by this chapter shall terminate at the earlier of initial law was not determined or when the City Council determines that no dollar amount has been determined, plus an amount sufficient to pay the costs related to issuing bonds and interest on the bonds has been received from the local sales and use tax imposed by this chapter to pay for all the capital and administrative costs directly related to completing the designated projects. Any funds remaining after payment of all such costs and retirement or redemption of the bonds shall be placed in the general fund of the city. The local sales and use tax imposed by this chapter may terminate at an earlier time if the City Council so determines by ordinance.
(Ord. 02-19, passed 8-19-2019)

§ 35.120 AGREEMENT WITH THE COMMISSIONER.

The city may enter into an agreement with the Commissioner regarding each party's respective roles and responsibilities related to the imposition, administration, collection, enforcement, and termination of the local sales and use tax imposed by this chapter. Any such agreement shall not abrogate, alter, or otherwise conflict with the state sales and use tax laws and rules, and this subchapter.
(Ord. 02-19, passed 8-19-2019)

FOOD AND BEVERAGE TAX

§ 35.130 AUTHORITY.

The state legislature has by Session Laws of Minnesota 2014, Chapter 308, Article 3, Section 34, authorized the city to impose an additional food and beverage tax within the city to provide revenues to pay for the construction and improvement of walking and bicycle trails; a multiuse civic center facility and parking improvements; and improvements related to the redevelopment of a road through the fairgrounds property ceded to the city by the City of Duluth. The city approved the Act in accordance with applicable law, as did the voters of the city.
(Ord. 07-14, passed 12-15-2014)

§ 35.131 DEFINITIONS.

The words, terms and phrases used in this subchapter shall have the meaning ascribed to them in M.S. § 297A.61, as it may be amended from time to time, except where the context clearly indicates otherwise. For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT. Laws of Minnesota for 2014, Chapter 308, Article 3, Section 34 as amended.

CITY. The City of Proctor.

CITY FOOD AND BEVERAGE. The tax imposed and collected pursuant to this subchapter.

COMMISSIONER. The Commissioner of Revenue for the state acting under the authority of an agreement entered into between the city and the state pursuant to the Act, or any other person or entity designated to administer and collect the city sales and use tax.

ORDINANCE. This subchapter in its present form.

RETAILER MAINTAINING A PLACE OF BUSINESS IN THE CITY OR ANY LIKE TERM. Any retailer having or maintaining within the city, directly or by a subsidiary, an office, place of distribution, sales or sample room or place, warehouse or other place of business, or having any representative, agent, salesperson, canvasser or solicitor operating in the city under the authority of the retailer or its subsidiary, for any purpose, including the repairing, selling, delivering, installing or soliciting of orders of the retailer's goods or services, or the leasing of tangible personal property located in the city, whether the place of business or agent, representative, salesperson, canvasser or solicitor, is located in the city permanently or temporarily, or whether or not the retailer or subsidiary is authorized to do business within the city.
(Ord. 07-14, passed 12-15-2014)

§ 35.132 IMPOSITION OF TAX.

(A) Except as otherwise provided in this subchapter, there is hereby imposed an additional excise tax in the amount of 1% on the gross receipts from the sales of food and beverages which occur within the city.

(B) The imposition, administration, collection and enforcement of this tax shall be governed by the provisions of M.S. § 297A.99, as it may be amended from time to time.

(Ord. 07-14, passed 12-15-2014)

§ 35.133 SEPARATE STATEMENT; COLLECTION FROM PURCHASER ADVERTISING NO TAX; MINIMUM UNIFORM TAX COLLECTION METHODS.

The city food and beverage tax shall be stated and charged separately from the sales price or charge for service insofar as practicable, and should be a debt from the purchaser to the seller recoverable at law in the same manner as other debts. In computing the tax to be collected as a result of transaction, any amount of tax less than one-half of the cent may be disregarded and amounts of tax one-half cent or more may be considered an additional cent. If the sales price of any sale at retail is \$0.99 or less, no tax shall be collected.

(Ord. 07-14, passed 12-15-2014)

§ 35.134 EXEMPTION CERTIFICATES.

An exemption certificate taken in good faith from a purchaser to the effect that the property purchased is for resale or that the sale is otherwise exempt from the application of the tax imposed by this subchapter will conclusively relieve the retailer from collecting and remitting the tax. A person who has obtained from the Commissioner an exemption certificate pursuant to M.S. Ch. 297, as it may be amended from time to time, may use the exemption certificate for the purposes of the sales tax imposed by the city.
(Ord. 07-14, passed 12-15-2014)

§ 35.135 PRESUMPTION OF PURPOSE OF SALE.

For the purpose of the proper administration and enforcement of § 35.132, it shall be presumed that all retail sales for delivery in the city are for storage, use or other consumption in the city until the contrary is established.
(Ord. 07-14, passed 12-15-2014)

§ 35.136 COLLECTION OF TAX AT TIME OF SALE.

(A) Any retailer making deliveries within the city, any retailer maintaining a place of business in the city, or any other retailer otherwise doing business within the city, upon making sales of any items described in § 35.132 which are not exempted from the sales tax imposed under that section and which are to be delivered or caused to be delivered within the city to the purchaser, shall at the time of making the sales collect the sales and use tax from the purchaser. The tax collected by such retailer shall be remitted to the Commissioner on behalf of the city.

(B) Any retailer required to collect the city food and beverage tax and remit the tax to the Commissioner pursuant to this section shall register with the Commissioner and provide any other information as the Commissioner may require.
(Ord. 07-14, passed 12-15-2014)

§ 35.137 AGENT OF RETAILER.

When in the opinion of the Commissioner, it is necessary for the efficient administration of the tax, the Commissioner may regard any salesperson, representative, trucker, peddler or canvasser as the agent of the dealer, distributor, supervisor, employer or other person under whom the salesperson, representative, trucker, peddler or canvasser operated or from whom the tangible property is being sold is obtained, and may regard the dealer, distributor, supervisor, employer or other person as a retailer for the purposes of this subchapter.
(Ord. 07-14, passed 12-15-2014)

§ 35.138 COLLECTION AND ENFORCEMENT.

The city food and beverage tax imposed by the city pursuant to this subchapter shall be subject to the same interests, penalties and other rules as are applicable to the state general sales and use tax imposed by M.S. Ch. 289A and M.S. Ch. 297A, as they may be amended from time to time. The city food and beverage tax imposed by the city pursuant to this subchapter may be collected by the state on behalf of the city as provided by an appropriate agreement with the State Commissioner of Revenue. (Ord. 07-14, passed 12-15-2014)

§ 35.139 TAX CLEARANCE ISSUANCE OF LICENSE.

(A) The city may not issue or renew a license for the conduct of a trade or business in the city if the Commissioner notifies the city that the applicant for the license owes delinquent city food and beverage taxes as provided in this subchapter, or penalties or interest due on the taxes.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. An individual if the license is issued to or in the name of an individual or the corporation, partnership or other entity if the license is issued to or in the name of a corporation, partnership or other entity.

CITY FOOD AND BEVERAGE TAXES. Includes the tax as provided in this subchapter. Penalties and interest are penalties and interest due on taxes included in this definition.

DELINQUENT TAXES. Does not include a tax liability if:

(a) An administrative or court action which contests the amount or validity or the liability has been filed or served;

(b) The appeal period to contest tax liability has not expired; or

(c) The applicant has entered into a payment agreement and is current with the payments.

(Ord. 07-14, passed 12-15-2014)

§ 35.140 COPY OF NOTICE.

A copy of the notice of delinquent taxes given to the city shall also be sent to the applicant taxpayer. In the case of renewal of a license, if the applicant requests a hearing in writing, within 30 days of the receipt of the notice of delinquent taxes, then a contested case hearing shall be held by the Commissioner under the same procedures as provided in M.S. Ch. 270C, as it may be amended from time to time, for the state sales and use tax imposed under M.S. Ch. 297A, as it may be amended from time to time, provided that if a hearing must be held on the state sales and use tax, hearings may be combined.

(Ord. 07-14, passed 12-15-2014)

§ 35.999 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) (1) If any tax imposed by §§ 35.080 through 35.094 is not paid within the time herein specified for the payment, or an extension thereof, there shall be added thereto a specific penalty equal to 10% of the amount remaining unpaid.

(2) In case of any failure to make and file a return within the time prescribed by §§ 35.080 through 35.094 unless it is shown that the failure is not due to willful neglect, there shall be added to the tax in addition to penalty provided in division (B)(1) above, a penalty of 10% for each 30-day period or fraction thereof during which the failure continues, not exceeding 25% in the aggregate. There shall be a minimum penalty assessed of an amount set by City Council from time to time by resolution. The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

(3) If any person willfully fails to file any return or make any payment required by §§ 35.080 through 35.094 or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat any tax or payment thereof, there shall also be imposed as a penalty an amount equal to 50% of any tax (less any amounts paid on the basis of the false or fraudulent return) found due for the period to which the return related. This penalty shall be collected as part of the tax and shall be in addition to any other penalties provided by §§ 35.080 through 35.094.

(4) All payments received shall be credited first to penalties, next to interest and then to the tax due.

(5) The amount of tax not timely paid, together with any penalty provided by §§ 35.080 through 35.094, shall bear interest at the rate of 10% per annum from the time the tax should have been paid until payment is made. Any interest and penalty shall be added to the tax and be collected as part thereof.

(Prior Code, § 1100.10)

CHAPTER 36: EMERGENCY MANAGEMENT

Section

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§ 36.01 POLICY AND PURPOSE.

Because of the existing possibility of the occurrence of disasters of unprecedented size and destruction resulting from fire, flood, tornado, blizzard, destructive winds or other natural causes, or from sabotage, hostile action, or from hazardous material mishaps of catastrophic measure; and in order to ensure that preparations of this city will be adequate to deal with those disasters, and generally, to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of the people of this city, it is hereby found and declared to be necessary:

(A) To establish a city emergency management organization responsible for city planning and preparation for emergency government operations in time of disasters;

(B) To provide for the exercise of necessary powers during emergencies and disasters;

(C) To provide for the rendering of mutual aid between this city and other political subdivisions of this state and of other states with respect to the carrying out of emergency-preparedness functions; and

(D) To comply with the provisions of M.S. § 12.25, as it may be amended from time to time, which requires that each political subdivision of the state shall establish a local organization for emergency management.

§ 36.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DISASTER. A situation which creates an immediate and serious impairment to the health and safety of any person, or a situation which has resulted in or is likely to result in catastrophic loss to property, and for which traditional sources of relief and assistance within the affected area are unable to repair or prevent the injury or loss.

EMERGENCY. An unforeseen combination of circumstances which calls for immediate action to prevent from developing or occurring.

EMERGENCY MANAGEMENT. The preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters caused by fire, flood, tornado, and other acts of nature, or from sabotage, hostile action, or from industrial hazardous material mishaps. These functions include, without limitation, fire-fighting services, police services, emergency medical services, engineering, warning services, communications, radiological, and chemical, evacuation, congregate care, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to civil protection, together with all other activities necessary or incidental for carrying out the foregoing functions. **EMERGENCY MANAGEMENT** includes those activities sometimes referred to as “civil defense” functions.

EMERGENCY MANAGEMENT FORCES. The total personnel resources engaged in city-level emergency management functions in accordance with the

provisions of this chapter or any rule or order thereunder. This includes personnel from city departments, authorized volunteers, and private organizations and agencies.

EMERGENCY MANAGEMENT ORGANIZATION. The staff responsible for coordinating city- level planning and preparation for disaster response. This organization provides city liaison and coordination with federal, state, and local jurisdictions relative to disaster preparedness activities and assures implementation of federal and state program requirements.

§ 36.03 ESTABLISHMENT OF EMERGENCY MANAGEMENT ORGANIZATION.

There is hereby created within the city government an emergency management organization which shall be under the supervision and control of the City Emergency Management Director, called the Director. The Director shall be appointed by the City Council for an indefinite term and may be removed by the City Council at any time. The Director shall serve with a salary as established by the City Council and shall be paid his or her necessary expenses. The Director shall have direct responsibility for the organization, administration and operation of the emergency preparedness organization, subject to the direction and control of the City Council. The emergency management organization shall conform to and be consistent with, where applicable, all state and federal requirements, including the National Incident Management System framework found at 44 C.F.R. part 201, as it may be amended from time to time.

§ 36.04 POWERS AND DUTIES OF DIRECTOR.

(A) The Director shall represent the city on any regional or state conference for emergency management. The Director shall develop proposed mutual aid agreements with other political subdivisions of the state for reciprocal emergency management aid and assistance in an emergency too great to be dealt with unassisted, and shall present these agreements to the City Council for its action. These arrangements shall be consistent with the State Emergency Plan.

(B) The Director shall make studies and surveys of the human resources, industries, resources, and facilities of the city as deemed necessary to determine their adequacy for emergency management and to plan for their most efficient use in time of an emergency or disaster. The Director shall establish the economic stabilization systems and measures, service staffs, boards, and sub-boards required, in accordance with state and federal plans and directions subject to the approval of the Mayor.

(C) The Director shall prepare a comprehensive emergency plan for the emergency preparedness of the city and shall present the plan to the City Council for its approval. When the City Council has approved the plan, it shall be the duty of all city agencies and all emergency preparedness forces of the city to perform the duties and functions assigned by the plan as approved. The plan may be modified in like manner from time to time. The Director shall coordinate the emergency management activities of the city to the end that they shall be consistent and fully integrated with the

emergency plans of the federal government and the state and correlated with emergency plans of the county and other political subdivisions within the state.

(D) In accordance with the State and City Emergency Plan, the Director shall institute training programs, public information programs and conduct practice warning alerts and emergency exercises as may be necessary to assure prompt and effective operation of the City Emergency Plan when a disaster occurs.

(E) The Director shall utilize the personnel, services, equipment, supplies, and facilities of existing departments and agencies of the city to the maximum extent practicable. The officers and personnel of all city departments and agencies shall, to the maximum extent practicable, cooperate with and extend services and facilities to the city's emergency management organization and to the Governor upon request. The head of each department or agency in cooperation with the Director shall be responsible for the planning and programming of those emergency activities as will involve the utilization of the facilities of the department or agency.

(F) The Director shall, in cooperation with those city departments and agencies affected, assist in the organizing, recruiting, and training of emergency management personnel, which may be required on a volunteer basis to carry out the emergency plans of the city and state. To the extent that emergency personnel are recruited to augment a regular city department or agency for emergencies, they shall be assigned to the departments or agencies and shall be under the administration and control of the department or agency.

(G) Consistent with the state emergency services law, the Director shall coordinate the activity of municipal emergency management organizations within the city and assist in establishing and conducting training programs as required to assure emergency operational capability in the several services as provided by M.S. § 12.25, as it may be amended from time to time.

(H) The Director shall carry out all orders, rules, and regulations issued by the Governor with reference to emergency management.

(I) The Director shall prepare and submit reports on emergency preparedness activities when requested by the Mayor.

§ 36.05 LOCAL EMERGENCIES.

(A) A local emergency may be declared only by the Mayor or his or her legal successor. It shall not be continued for a period in excess of three days except by or with the consent of the City Council. Any order, or proclamation declaring, continuing, or terminating a local emergency shall be given prompt and general publicity and shall be filed in the office of the Clerk-Treasurer.

(B) A declaration of a local emergency shall invoke necessary portions of the response and recovery aspects of applicable local or inter-jurisdictional disaster plans, and may authorize aid and assistance thereunder.

(C) No jurisdictional agency or official may declare a local emergency unless expressly authorized by the agreement under which the agency functions. However, an inter-jurisdictional disaster agency shall provide aid and services in accordance with the agreement under which it functions.

Penalty, see § 36.99

§ 36.06 EMERGENCY REGULATIONS.

(A) Whenever necessary, to meet a declared emergency or to prepare for an emergency for which adequate regulations have not been adopted by the Governor or the City Council, the City Council may by resolution promulgate regulations, consistent with applicable federal or state law or regulation, respecting: the conduct of persons and the use of property during emergencies; the repair, maintenance, and safeguarding of essential public services, emergency health, fire, and safety regulations, drills or practice periods required for preliminary training, and all other matters which are required to protect public safety, health, and welfare in declared emergencies.

(B) Every resolution of emergency regulations shall be in writing; shall be dated; shall refer to the particular emergency to which it pertains, if so limited, and shall be filed in the office of the Clerk-Treasurer. A copy shall be kept posted and available for public inspection during business hours. Notice of the existence of these regulations and their availability for inspection at the Clerk-Treasurer's office shall be conspicuously posted at the front of the city hall or other headquarters of the city or at other places in the affected area as the City Council shall designate in the resolution. By resolution, the City Council may modify or rescind a regulation.

(C) The City Council may rescind any regulation by resolution at any time. If not sooner rescinded, every regulation shall expire at the end of 30 days after its effective date or at the end of the emergency to which it relates, whichever comes first. Any resolution, rule, or regulation inconsistent with an emergency regulation promulgated by the City Council shall be suspended during the period of time and to the extent conflict exists.

(D) During a declared emergency, the city is, under the provisions of M.S. § 12.37, as it may be amended from time to time and notwithstanding any statutory or Charter provision to the contrary, empowered, through its City Council, acting within or without the corporate limits of the city, to enter into contracts and incur obligations necessary to combat the disaster by protecting the health and safety of persons and property and providing emergency assistance to the victims of a disaster. The city may exercise these powers in the light of the exigencies of the disaster without compliance with the time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering rental equipment agreements, purchase of supplies and materials, limitations upon tax levies, and the appropriation and expenditure of public funds, including, but not limited to, publication of resolutions, publication of calls for bids, provisions of personnel laws and rules, provisions relating to low bids, and requirement for bids.

Penalty, see § 36.99

§ 36.07 EMERGENCY MANAGEMENT A GOVERNMENT FUNCTION.

All functions and activities relating to emergency management are hereby declared to be governmental functions. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this resolution or under the worker's compensation law, or under any pension law, nor the right of any person to receive any benefits or compensation under any act of Congress.

§ 36.08 PARTICIPATION IN LABOR DISPUTES OR POLITICS.

The emergency management organization shall not participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes, nor shall it be employed in a labor dispute.

§ 36.99 PENALTY.

Any person who violates any provision of this chapter or any regulation adopted thereunder relating to acts, omissions, or conduct other than official acts of city employees or officers is guilty of a misdemeanor.

CHAPTER 37: FEE SCHEDULE

Section
 37.01 Fee schedule

§ 37.01 FEE SCHEDULE.

<i>Schedule of Charges and Fees</i>		
Service, Licenses and the Like	Code Section	Charge/Fee
Building Code Board of Appeals	§ 150.01(B)	An amount set by City Council from time to time by resolution
Building Inspector's fee	§ 150.01(B)	An amount set by City Council from time to time by resolution
Building Permit	§ 150.01	An amount set by City Council from time to time by resolution
Commercial Parking Lot		
Annual fee of an amount set		An amount set by City

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Schedule of Charges and Fees		
Service, Licenses and the Like	Code Section	Charge/Fee
by City Council from time to time by resolution		Council from time to time by resolution
Semi-annual fee of an amount set by City Council from time to time by resolution		An amount set by City Council from time to time by resolution
Daily fee of an amount set by City Council from time to time by resolution		An amount set by City Council from time to time by resolution
Conditional Use Permit	§§ 155.270— 155.276	
Application fee		An amount set by City Council from time to time by resolution
Per City Council motion on 2-2-2004 for City Attorney preparation of use/easement agreement, conditional use permits that benefit private property owners		An amount set by City Council from time to time by resolution
Building Inspector's time		An amount set by City Council from time to time by resolution
Conduit Financing Fee		Closing costs and administrative fee of an amount set by City Council from time to time by resolution
Dog or Cat License	§ 90.07(C)	An amount set by City Council from time to time by resolution neutered male or spayed female
		An amount set by City Council from time to time by resolution unneutered male or unspayed female
		Late fee, an amount set by City Council from time to time by resolution
Escrow Deposits	§ 35.037	Actual cost of consultants to city or PUC, plus Council established fees for City

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Schedule of Charges and Fees		
Service, Licenses and the Like	Code Section	Charge/Fee
		Attorney, City Engineer, City Planner and other city personnel
Excavation Fee	§ 52.15	An amount set by City Council from time to time by resolution
Fingerprinting		Fee determined by Police Department
Garbage Fees (Delinquent)	§§ 50.12, 50.13	An amount set by City Council from time to time by resolution
Home Occupation	§ 155.001	An amount set by City Council from time to time by resolution
Housing Code Inspection Fee	§ 150.01(F)	An amount set by City Council from time to time by resolution
		Reinspections, an amount set by City Council from time to time by resolution
Impounding Fee - Animals	§ 90.09(E)	An amount set by City Council from time to time by resolution
Liquor Licensing	§ 120.066	
“On sale” 3.2 beer		An amount set by City Council from time to time by resolution
“Off sale” 3.2 beer		An amount set by City Council from time to time by resolution
“Temporary” 3.2 beer		An amount set by City Council from time to time by resolution
“Off sale” liquor - not allowed		An amount set by City Council from time to time by resolution
“On sale” liquor		An amount set by City Council from time to time by resolution
Temporary “on sale” club liquor (one-day limit)		An amount set by City Council from time to time by

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Schedule of Charges and Fees		
Service, Licenses and the Like	Code Section	Charge/Fee
		resolution
"On sale" club liquor license		An amount set by City Council from time to time by resolution
"On sale" Sunday club liquor license (regular licenses and clubs)		An amount set by City Council from time to time by resolution
Liquor license beyond application deadline		An amount set by City Council from time to time by resolution
Non-enclosed premises - if not applied for at time of initial application		An amount set by City Council from time to time by resolution
Peddlers, Solicitors and Transient Merchants	§ 115.05	Daily, an amount set by City Council from time to time by resolution
		Weekly, an amount set by City Council from time to time by resolution
		Monthly, an amount set by City Council from time to time by resolution
		Yearly, an amount set by City Council from time to time by resolution
Plan/Design Review Fee	§ 150.01(B)	Residential and commercial permit cost, an amount set by City Council from time to time by resolution
Extenuating circumstances		Building Inspector's time, an amount set by City Council from time to time by resolution
		Street Department Working Foreman, an amount set by City Council from time to time by resolution
		Current hourly rate plus 10% for City Engineer time or any other consultant city must engage for plan review

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Schedule of Charges and Fees		
Service, Licenses and the Like	Code Section	Charge/Fee
Plan Review Fee: Erosion and Sediment Control Plan	Ch. 152	Per district's schedule of fees to cover any review or inspection costs incurred
Platting/Subdivision Review Fee	§ 150.01(B)	An amount set by City Council from time to time by resolution
Plumbing Permit Fee	§ 150.01(F)	An amount set by City Council from time to time by resolution
Plumbing Inspector's Fee		An amount set by City Council from time to time by resolution
Public Dancing	§§ 118.15, 118.16	An amount set by City Council from time to time by resolution
Rezoning	§ 150.01	An amount set by City Council from time to time by resolution
		Zoning map amendment fee (if successful), an amount set by City Council from time to time by resolution
Sewer Connection	§ 52.01	An amount set by City Council from time to time by resolution plus plumbing and excavation inspection fee (for all new connections or projects not involving special assessments for the connections) Plumbing Inspector's fee (plus excavation permit fee)
Sewer Charge, for Usage	§ 51.23(G)	Monthly service charge for residential or commercial, an amount set by City Council from time to time by resolution
		100 cubic feet; residential, an amount set by City Council from time to time by resolution
		Per cubic feet; commercial,

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Schedule of Charges and Fees		
Service, Licenses and the Like	Code Section	Charge/Fee
		an amount set by City Council from time to time by resolution
Sexually Oriented Business		License fee, an amount set by City Council from time to time by resolution
Shows, Games and the like	§ 113.03	Per day (for circus, menagerie or similar show), an amount set by City Council from time to time by resolution
		Per day (for any play, game, merry-go-round or theatrical performance or exhibition), an amount set by City Council from time to time by resolution
		For more than one week, an amount set by City Council from time to time by resolution
		For more than two weeks, an amount set by City Council from time to time by resolution
		For one month, an amount set by City Council from time to time by resolution
		For six months, an amount set by City Council from time to time by resolution
		For one year, an amount set by City Council from time to time by resolution
Sign Permit Fee	§§ 155.225— 155.236	Per permit schedule (based upon project cost of the sign;)
Soil and Erosion Ordinance Review		Charges are based upon soil and water district charges or else charges based on actual City Engineer charges if actual city costs exceed plan review fees collected

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Schedule of Charges and Fees		
Service, Licenses and the Like	Code Section	Charge/Fee
Soil Erosion Control Fines		An amount set by City Council from time to time by resolution
Solid Waste Rates	§ 50.03(D)(7)	The city adopts maximum rate schedule of the City of Duluth
Special Use Permits/Community, Unit Development	§ 150.01(B)	An amount set by City Council from time to time by resolution
Stormwater Management Plan Fee		An amount set by City Council from time to time by resolution
Street Dance		An amount set by City Council from time to time by resolution (plus applicable insurance and deposit)
Street Department Working Foreman's Fee	§ 150.01(B)	An amount set by City Council from time to time by resolution
Towing	Ch. 116	Permit fee of an amount set by City Council from time to time by resolution; paid to towing operator; police calls only
		Not in excess of an amount set by City Council from time to time by resolution per tow, per vehicle (motorcycle, ATV, snowmobile, automobile or light truck) for emergency towing or an amount set by City Council from time to time by resolution per tow using a flat bed
Storage fee		For first 14 days: an amount set by City Council from time to time by resolution
		Thereafter: an amount set by City Council from time to time by resolution (covers automobile, light truck, motorcycle, ATV,

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Schedule of Charges and Fees		
Service, Licenses and the Like	Code Section	Charge/Fee
		snowmobile)
Variance Fee	§ 150.01	An amount set by City Council from time to time by resolution
Vacating - Alleys, Streets		An amount set by City Council from time to time by resolution
Water Connection	§ 52.01	
3/4 inch		An amount set by City Council from time to time by resolution
1 inch		An amount set by City Council from time to time by resolution
2 inches		An amount set by City Council from time to time by resolution
		Plus plumbing inspection fee and excavation fee
Water Usage Charges	§ 51.23(H)	Residential
Monthly service charge		An amount set by City Council from time to time by resolution
Per 100 cubic feet		An amount set by City Council from time to time by resolution

(Ord. passed - -; Ord. 02-05, passed 4-4-2005)