

CITY OF PLYMOUTH
Ordinance No. 5 of 2019

**AN ORDINANCE REPEALING AND RECREATING TITLE 9 OF THE MUNICIPAL
CODE OF THE CITY OF PLYMOUTH, WISCONSIN REGARDING PUBLIC UTILITIES**

WHEREAS, the City of Plymouth operates its own water, sewer and electric public utilities; and

WHEREAS, pursuant to Wis. Stat. Chapters 62 and 66 the Common Council has authority to prepare a code of ordinances and to establish a stormwater utility; and

WHEREAS, management of stormwater and other surface water discharge will benefit the health, safety and welfare of the City, its residents and businesses and the surrounding areas; and

WHEREAS, the Public Works/Utility Committee recommends the addition of a Stormwater Utilities chapter to Title 9 of the Municipal Code; and

WHEREAS, the Common Council and the Public Works/Utility Committee desire to update the Public Utilities Title of the Municipal Code to reflect the creation of the Stormwater Utility and other organizational changes.

NOW, THEREFORE, the Common Council of the City of Plymouth, Wisconsin, does hereby ordain as follows:

Section 1. Repealing and Recreating Code. Title 9, entitled Public Utilities of the Municipal Code of the City of Plymouth is hereby repealed and recreated to read as follows:

“CHAPTER 1

Water Utility Regulations and Rates

9-1-1 Public Service Commission Rates and Regulations

SEC. 9-1-1 PUBLIC SERVICE COMMISSION RATES AND REGULATIONS.

The current rates and regulations prescribed by the State Public Service Commission for the City of Plymouth water utility are adopted herein by reference.

CHAPTER 2

Sewer Utility Rates and Regulations

9-2-1 Sewer Utility Rates and Regulations

SEC. 9-2-1 SEWER UTILITY RATES AND REGULATIONS.

The Plymouth Sewer Utility is hereby created and all sanitary sewers, lift stations, sewage treatment plants, and other equipment, apparatus and appurtenances relating thereto which are used for the disposal and/or treatment of sanitary sewage throughout the City, are hereby recognized as being managed and controlled by Plymouth Utilities, under the control and supervision of the Common Council, pursuant to this Ordinance and State Law. The current rates and regulations prescribed by the Common Council for the City of Plymouth sewer utility are adopted herein by reference. Such rates and regulations may be amended from time to time by resolution of the Common Council.

CHAPTER 3

Electric Utility Regulations and Rates

9-3-1 Public Service Commission Rates and Regulations

SEC. 9-3-1 PUBLIC SERVICE COMMISSION RATES AND REGULATIONS.

The current rates and regulations prescribed by the State Public Service Commission for the City of Plymouth electric utility are adopted herein by reference.

CHAPTER 4

Communications Utility

9-4-1 Telecommunications Services Utility

SEC. 9-4-1 TELECOMMUNICATIONS SERVICES UTILITY.

Subject to the general control and supervision of the Common Council, Plymouth Utilities is authorized to provide telecommunications services within its service area, and to carry out all associated activities to the fullest extent allowed by all applicable federal and state laws, including Wis. Stat. § 62.11(5), and in compliance therewith. "Telecommunications service: means the offering for sale of the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching and delivery incidental to such communication and including the regulated sale of customer premises equipment.

CHAPTER 5

Stormwater Utility

9-5-1	Establishment
9-5-2	Authority
9-5-3	Definitions
9-5-4	Rate Charges
9-5-5	Customer Classification
9-5-6	New Construction
9-5-7	Method of Appeal
9-5-8	Special Assessment Authority
9-5-9	Budget Excess Revenues

SEC. 9-5-1 ESTABLISHMENT.

The City of Plymouth finds that the management of stormwater and other surface water discharge within and beyond the Mullet River (the "City's Waterways") is a matter that affects the health, safety and welfare of the City, its citizens and businesses, and others in the surrounding area. Failure to effectively manage stormwater affects the wastewater utility operations of the City by, among other things, increasing the likelihood of infiltration and inflow in the sanitary sewer or providing a more restrictive phosphorus effluent limit for the wastewater treatment plant's discharge into the Mullet River. In addition, surface water runoff may create erosion of lands, threaten businesses and residences with water damage, and create sedimentation and other environmental damage in the City's Waterways. Those elements of the system that provide for the collection of and dispose of stormwater, reduction of sediment and nutrients in the City's Waterways, and regulation of groundwater are of benefit and provide services to all properties within the City of Plymouth, including property not presently served by the storm elements of the system. The cost of operating and maintaining the City stormwater management system and financing necessary repairs, replacements, improvements and extensions thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom.

There is hereby established a City of Plymouth Stormwater Utility. The operation of the Stormwater Utility shall be under the supervision of the Common Council. The City Administrator/Utilities Manager shall be in charge of the Stormwater Utility.

SEC. 9-5-2 AUTHORITY.

The City, through the Stormwater Utility, may acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such real estate and facilities as are deemed by the City to be proper and reasonably necessary for a system of storm and surface water management. These facilities may include, without limitation by enumeration, surface and underground drainage facilities, sewers, water courses, retaining walls and ponds, best management practices, and such other facilities as will support a stormwater management system.

SEC. 9-5-3 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply: Words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense; the word "shall" is mandatory and not discretionary; the word "may" is permissive. Terms not specifically defined herein shall have the meaning defined in NR 216.002, Wisconsin Administrative Code, and as the same may be amended from time to time, if defined therein; or if not therein defined, shall be construed to have the meaning given by common and ordinary use, as defined in the latest edition of Webster's Dictionary.

(a) **Director.** The term "Director" means the Director of Public Works, or his/her designee.

(b) **Developed Property.** The term "developed property" means the real property that has been altered from its natural state by the addition of any improvements that may include a building, structure, impervious surface, and change in grade or landscaping.

(c) **Equivalent Runoff Unit (ERU).** The term "ERU" means the statistical average horizontal impervious area of "single family homes" within the City of Plymouth on the date of adoption of this ordinance. The horizontal impervious area includes, but is not limited to all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks.

(d) **Impervious Area or Impervious Surface.** The term "impervious area or impervious surface" means areas that have been paved, covered or compacted to inhibit the natural infiltration of water into the soil or cause water to run off the area in greater quantities or at an increased rate of flow from the present under natural conditions as undeveloped property. Such areas may include, but are not limited to, roofs, roof extensions, patios, porches, driveways, sidewalks, pavement, gravel, athletic courts and compacted surfaces. Excluded from this definition are undisturbed land, lawn and fields.

(e) **Duplex Unit.** The term "duplex unit" means any residential space identified for habitation by members of the same household attached to only one other residential space or as classified by the City Building and Zoning Codes.

(f) **Dwelling Unit.** The term "dwelling unit" means any residential space identified for habitation by members of the same household or as classified by the City Building and Zoning Codes. A dwelling unit includes, but is not limited to, single family homes, manufactured homes, duplexes, multi-family apartments, residential condominiums and townhouse living units.

(g) **Residential Property.** The term "residential property" means any lot or parcel developed exclusively for residential purposes including, but not limited to, single-family homes, manufactured homes, duplexes, multi-family apartments, residential condominiums and townhouse living units.

(h) **Non-Residential Property.** The term "non-residential property" means any developed lot or parcel not exclusively residential as defined herein, but not limited to,

transient rentals (such as hotels and motels), mobile home park, commercial, industrial, institutional, governmental property and parking lots.

(i) **Runoff.** The term “runoff” means the surface water, including rain and snow melt, which is inhibited by impervious surfaces from naturally infiltrating into soil.

(j) **Stormwater Facilities.** The term “stormwater facilities” means all constructed facilities or natural features used for collecting, storing and conducting stormwater to, through and from drainage areas to the point of final outlet. Stormwater facilities collectively constitute a stormwater system.

(k) **Undeveloped Property.** The term “undeveloped property” means that which has not been altered from its natural state by the addition of any improvements, such as a building, structure, impervious surface, change of grade or landscaping. Agriculture cropland is classified as undeveloped property. For new construction, a property shall be considered developed pursuant to this ordinance at the time of water meter installation or upon review of the actual impervious area by January 1st.

SEC. 9-5-4 RATE CHARGES.

(a) By this ordinance, the Common Council is establishing the rate charge upon each lot and parcel within the City of Plymouth for services and facilities provided by the Stormwater Utility. The actual charges to be imposed, the establishment of formulas for calculations of the charges, the establishment of specific customer classifications and any future changes in those rates, formulas, rate charges and customer classifications, may be made by resolution of the Common Council. All rates established pursuant to this ordinance will be fair and reasonable in accordance with the decision and judgment of the Common Council. The current rates will be on file with Plymouth Utilities.

(b) **Rate charges shall be used to share the costs of the Stormwater Utility.** These rate charges may include:

- (1) Base Charge (BC). The Base Charge may be imposed on all property in the City. The Base Charge will be designed to reflect the fact that all properties benefit from the stormwater management activities of the City and that all property contribute in some way to the stormwater discharge that must be managed by the City. The BC will be designed to collect the administrative costs of the stormwater utility and the portion of the capital costs not covered by special assessment. The BC may be based upon the size of a parcel of property.
- (2) Equivalent Runoff Unity Charge (ERU). This charge shall be imposed on all property that has any developed impervious area. The ERU will be designed on the basis of a typical residential unit of property. Other units of property will be charged multiples of the ERU, based upon the impervious area contributing to surface water runoff.
- (3) Special Charge (SC). This charge may be imposed on property that is in an area specially benefited by a particular stormwater management facility. The SC will be developed to reflect the benefits/services in a particular area that may not be appropriate to spread to property throughout the City. The SC will be calculated on an ERU basis.

(c) The Common Council may make such other and customer classifications as will be likely to provide reasonable and fair distribution of the costs of the Stormwater Utility. In so doing, the Council may provide credits against certain of the charges set forth above for facilities installed and maintained by the property owner for the purpose of lessening the stormwater flow or pollutant load from that given property.

(d) Plymouth Utilities is hereby appointed as the collection agency for the City of Plymouth Stormwater Utility. Bills shall be prepared monthly by the City or its agent and sent to the owner of each property served. The City shall allocate among the properties served the actual cost of billing and collecting.

(e) The bills for Stormwater Utility charges shall be mailed to the designated utility bill recipient, but this mailing shall not relieve the owner of the property from liability for rental property in the event payment is not made as required in this chapter. The owner of any property served which is occupied by tenants shall have the right to examine collection records of the City for the purpose of determining whether such rates and charges have been paid for such tenants, provided that such examination shall be made at the office at which the records are kept and during the hours that such office is open for business.

(f) Stormwater Utility charges shall not be payable in installments. If Stormwater Utility charges remain unpaid after a period of twenty (20) days from the date of the monthly utility bill, such bill shall become delinquent and shall incur late payment charges. Late payment charges shall be applied consistent with current Plymouth Utilities policy. Unpaid charges shall be assessed the same as the water utility bills.

SEC. 9-5-5 CUSTOMER CLASSIFICATION.

(a) For purposes of imposing the stormwater charges, all lots and parcels within the City are classified into the following five (5) customer classes:

- (1) Residential - Single-Family.
- (2) Residential - Duplex.
- (3) Residential - Multi-Family and Condominium.
- (4) Non-Residential.
- (5) Undeveloped.

(b) The Director shall prepare a list of lots and parcels within the City of Plymouth, and assign a classification of residential, non-residential or undeveloped to each lot or parcel.

(c) The average square footage of impervious area of the ERU is established to be equivalent to 3,850 square feet.

(d) The charges imposed for single-family residential properties shall be the rate for one (1) ERU.

(e) The charges imposed for duplex residential properties shall be the rate for six-tenths (0.6) of one (1) ERU per each individual dwelling unit existing on the property (ERU rate multiplied by the number of dwelling units). The charges imposed for residential

condominium plats with a maximum of two dwelling units shall be the rate for six-tenths (0.6) of one (1) ERU per each individual dwelling unit.

(f) The charges imposed for multi-family apartment, condominium and townhouse residential properties shall be the same as non-residential properties, except residential condominium plats with a maximum of two dwelling units shall be the same as duplex residential properties.

(g) The charges imposed for non-residential properties shall be the rate for one (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the square footage of one (1) ERU. The numerical factor shall be rounded down to the nearest one-tenth (0.1), i.e.:

$$\frac{\text{ERU rate multiplied by impervious area (square feet)}}{\text{divided by 3,850 square feet}}$$

(h) No charge is imposed for undeveloped properties.

The Director shall be responsible for determining the impervious area, based upon the best available information, including, but not limited to, data supplied by the Building Inspector, aerial photography, the property owner, tenant or developer. The Director may require additional information, as necessary, to make the determination. The billing amount shall be updated by the Director on any additions to the impervious area. Upon property owner's written notification and request, the Director shall review impervious area for possible reductions.

SEC. 9-5-6 NEW CONSTRUCTION.

The owner shall also be liable for stormwater charges, under this ordinance, for the improvement from the date of water meter installation or upon review of the actual impervious area by January 1st.

SEC. 9-5-7 METHOD OF APPEAL.

(a) The Stormwater Utility charge may be appealed, as follows:

- (1) A written appeal shall be filed with Plymouth Utilities prior to the utility charge due date; or
- (2) Within thirty (30) days of payment, a written challenge to the stormwater charge must be filed with the Director on behalf of the customer, specifying all bases for the challenge, any supporting documentation, and the amount of the stormwater charge the customer asserts is appropriate. Failure to file a challenge within thirty (30) days of payment waives all right to later challenge the charge.

A property owner not satisfied with the Director's decision can appeal to the Public Works & Utilities Committee for their review and action within thirty (30) days from the date of the Director's written decision. Both the property owner and Director may supply additional written information to the Committee. The Committee may affirm, reverse or modify the Director's decision. The Committee's written decision shall be provided to the Director and

property owner. The Committee's determination is final. Within thirty (30) days of the date of the Committee's written decision, the property owner may appeal the decision to circuit court through a certiorari action.

(b) Any refunds are going forward into the future and not the past.

SEC. 9-5-8 SPECIAL ASSESSMENT AUTHORITY.

In addition to any other method for collection of the charges established pursuant to this ordinance for stormwater utility costs, the Common Council finds that these charges may be levied on property as a special charge pursuant to Wis. Stat. § 66.0627. The charges established hereunder reasonably reflect the benefits conferred on property and may be assessed as special charges. The mailing of the bill for such charges to the owner will serve as notice to the owner that failure to pay the charges when due may result in them being charged pursuant to the authority of Wis. Stat. § 66.0627. In addition, the City may provide notice each October of any unpaid charges to the Stormwater Utility, which charges, if not paid by November 15, may be placed on the tax roll under Wis. Stat. § 66.0627.

SEC. 9-5-9 BUDGET EXCESS REVENUES.

The Stormwater Utility finances shall be accounted for in a separate Stormwater Management Fund by the City. The Utility shall prepare an annual budget, which is to include all operation and maintenance costs, administrative costs, depreciation costs, debt service and other costs related to the operation of the Stormwater Utility. The budget is subject to approval by the Common Council. The costs shall be spread over the rate classifications as determined by the Council. Any excess of revenues over expenditures in a year will be retained by the Stormwater Management Fund for subsequent years' needs.

CHAPTER 6

Cable Television

- 9-6-1 Definitions
- 9-6-2 Grant of Franchise
- 9-6-3 Termination of Franchise
- 9-6-4 Transfer, Assignment and Sale of Franchise
- 9-6-5 Completion of Construction and Extension of System
- 9-6-6 Service and Operation Standards
- 9-6-7 Rates
- 9-6-8 Amendments to Chapter
- 9-6-9 Relocation, Temporary Disconnects and Redesign
- 9-6-10 City's Right of Intervention
- 9-6-11 City's Right of Inspection
- 9-6-12 Easements and Permits
- 9-6-13 Reports

9-6-14	Ownership and Operation Information
9-6-15	Sales and Servicing of Broadcast Receivers
9-6-16	Unauthorized Connections or Modifications
9-6-17	Subscriber Privacy
9-6-18	Construction and Network Technical Standards and Measurements
9-6-19	Liability and Indemnification
9-6-20	Compliance with Laws, Rules and Regulations
9-6-21	Fees
9-6-22	Franchise Application

SEC. 9-6-1 DEFINITIONS.

For the purpose of this Chapter the following terms, phrases and words and their derivations shall have the following meanings:

(a) **Additional and Auxiliary Service** shall mean service other than service provided by the Grantee to the subscriber on a monthly basis and for which subscriber pays a set fee.

(b) **Annual Gross Subscriber Revenues** shall mean the revenues received by the Grantee, its affiliates or subsidiaries from the monthly service charge to subscribers and is other than that revenue received from additional or auxiliary service.

(c) **Basic Service** shall mean subscriber services provided by the Grantee, including the delivery of broadcast signals and programming originated over the cable system covered by the regular monthly charge paid by all subscribers.

(d) **Broadband Telecommunications Network** shall mean any network of cables, optical, electrical or electronic equipment, including cable television systems, used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital for sale or use by the inhabitants of the City, and may also be referred to in this Chapter as CATV system.

(e) **BTN Network Channel Capacity** shall mean the highest total number of cable television channels on which television signals from separate sources may be delivered downstream simultaneously to every subscriber in the network. The network may have additional channel capacity for specialized or discrete purposes, but the technical performance specified shall not be materially degraded thereby.

(f) **Cable Television Channel** shall mean a frequency band 6MHz in width within which a standard television broadcast signal is delivered by cable to a subscriber terminal.

(g) **Channel Frequency Response** shall mean, within a cable television channel, the relationship as measured at a subscriber terminal between amplitude and frequency of a constant-amplitude input signal at all specified frequencies within each channel.

(h) **City** shall mean the City of Plymouth, or the area within the corporate limits of the City and such territory outside of the City over which the City has jurisdictional control by

virtue of any Constitutional or Charter provisions, or by any statute, together with any annexations thereto, subsequent to adoption of this Chapter.

(i) **Commence Operation** will be considered to have commenced when sufficient distribution facilities have been installed so as to permit the offering of "full network service" to at least fifty percent (50%) of the dwelling units located within the designated "service area".

(j) **Common Council** shall mean the Common Council of the City of Plymouth.

(k) **Data Grade** shall mean coded transmission primarily digital in nature.

(l) **Db** shall mean the level in the network expressed in db's above or below a power corresponding to a root mean square voltage of one (1) millivolt across seventy-five (75) ohms.

(m) **Discrete Cable Television Channel** shall mean a signaling path provided by a cable television system to transmit signals of any type to specified subscriber terminals within the cable television system.

(n) **Downstream** shall mean the direction of transmission over the BTN from the head end or hub to a subscriber's terminal.

(o) **Franchise** shall mean the right, privilege, and authority granted by the Common Council to construct, maintain and operate a broadband telecommunications network within the City.

(p) **Franchise Payment** shall include all charges imposed for a franchise whether the object be regulation, revenue or one-time reimbursement of costs incurred by the City in the award of a franchise.

(q) **Grantee** shall mean any firm, corporation, or other entity to which the City grants a franchise to construct, maintain, and operate a broadband telecommunications network within the City, and any lawful successor or assignees of said franchise recipient.

(r) **Head End** shall mean the lands, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a broadband telecommunications network, excluding the studio.

(s) **Hub Configuration** shall mean a BTN design technology wherein all transmission paths either originate or terminate at a central location within the community.

(t) **Reasonable Notice** shall mean the provision of notice of contemplated action delivered at least seventy-two (72) hours prior to such action.

(u) **Service Area** shall mean the geographical area within the incorporated limits of the City including all annexations thereto.

(v) **Street** shall include all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, right-of-ways, or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated by law.

(w) **Video Grade** shall mean transmission primarily analog in nature, including the picture phase of a television broadcast.

SEC. 9-6-2 GRANT OF FRANCHISE.

(a) A franchise which may be granted hereunder shall give the Grantee the nonexclusive right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, above, over and under streets which have been or may hereafter be dedicated and open to public use in the City, towers, antennas, poles, cables, electronic equipment, and other network appurtenances for operation of a Broadband Telecommunications Network in the City utilizing, wherever possible, existing facilities with the right upon application to the Plymouth Utilities Commission to set such poles or other equipment on new facilities constructed by the Grantee, and said Plymouth Utilities Commission shall not unreasonably refuse permission for said construction, however, a non-proliferation of poles policy for aesthetic purposes shall be considered. The right and privilege granted shall be in compliance with the City's zoning and subdivision ordinances, and all other applicable ordinances of the City. In the event it becomes necessary to secure additional easements or change existing easements, Grantee shall be solely responsible for the cost thereof.

(b) Grantee's franchise application dated and filed in the office of the City Clerk shall constitute and form a part of this Chapter, except in the event of conflicting provisions in which case this Chapter shall prevail.

(c) Any franchise granted hereunder shall give to the Grantee the authority to trim trees overhanging the streets so as to prevent damage to the telecommunications network and interruption of service, subject to the approval of the Director of Public Works.

(d) Upon filing by the Grantee of the proper acceptance and required insurance, the franchise shall take effect and shall continue in full force and effect for a term of fifteen (15) years unless sooner terminated as herein provided.

(e) (1) On or about the first, fifth, tenth, and fifteenth anniversaries of the effective date of the franchise, the City and the Grantee will jointly review the performance of the Grantee's operation and specifically, the City will inquire whether the Grantee is supplying a level of service equivalent to that being generally offered at that time in the industry in comparable market situations. In the event the Grantee desires to change or modify its obligations under this Chapter or franchise application, it may negotiate with the Common Council to do so at that time.

(2) Within sixty (60) days of the conclusion of the review, the City and Grantee shall report in a public proceeding the results of their review and their conclusions. The Common Council may then order unilateral changes in the franchise rights and obligations where said changes cause no adverse Economic

impact. Any changes that cause substantial adverse economic impact shall be subject to negotiations with the Grantee. Disputes hereunder shall be resolved by arbitrators, one selected by each party and the third to be selected by the first two. The decision of the arbitrators shall be final and binding on both parties, and shall be based upon what is fair and equitable to all concerned.

(f) At least six (6) months prior to the expiration of the franchise, the City shall schedule a public meeting or meetings affording due process to the Grantee to review the performance of the Grantee, including the results of previous franchise reviews. The City may require the Grantee to make available specified records, documents and information for this purpose. Upon concluding said meetings, the City shall, within thirty (30) days of the conclusion of such meetings, make decision on the reissuance of the franchise to the Grantee. The Grantee shall not be denied renewal unless it is determined by the City that renewal would not be in the public interest. Renewal shall not be arbitrarily or capriciously denied. Any renewal period shall be as determined by the City at the time of renewal, and need not be for an additional fifteen (15) year period.

(g) Any franchise granted under this Chapter by the City shall be nonexclusive.

(h) The grant of a franchise under this Chapter may be by Resolution of the Common Council and shall bind the Grantee to all terms and provisions contained in this Chapter and in its franchise application, upon acceptance by the Grantee.

SEC. 9-6-3 TERMINATION OF FRANCHISE.

(a) The City reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated therewith in the event of:

- (1) Non-compliance by the Grantee with any material provision of this Chapter or its application as submitted to the City.
- (2) The Grantee enters into receivership or liquidation, files a petition for bankruptcy or any similar proceeding, is unable or unwilling to pay its debts as they mature, provided, however, that such financial disability must be of sufficient consequence so as to jeopardize the continued operation of the network.
- (3) Any false, misleading or fraudulent statement made by the Grantee in its proposal for franchise, or other reports or information provided to the City, to regulatory agencies, or to subscribers.

(b) In the event the City should decide to terminate for cause any franchise granted hereunder, it shall give the Grantee ninety (90) days written notice of its intent to terminate and set forth the cause therefore. If during the ninety (90) day period the cause shall be cured to the satisfaction of the City, the City shall declare the notice to be void. The Grantee shall in all cases be provided a public hearing before the Common Council prior to any termination.

(c) Should the Grantee's franchise be terminated or expire and there is no judicial or administrative review of the termination or expiration having been commenced, the Grantee shall make removal of all property owned by it and placed in the public

right-of-way within ninety (90) days, unless permitted by the City to abandon said property in place or transfer it to a purchaser.

SEC. 9-6-4 TRANSFER, ASSIGNMENT AND SALE OF FRANCHISE.

(a) This franchise may be transferred, assigned or sold only with the written consent of the Common Council and approved only if the transferee, assignee, or purchaser agrees in writing to be subject to all the terms and conditions of this Chapter. The Grantee shall notify the Common Council at least sixty (60) days before a proposed transfer, assignment or sale is to take effect. Such notice must be in the form of a written request to the City Clerk stating the reasons why such an assignment is necessary and/or advisable and detailing the expected changes in the operation of the system. Information concerning the legal character, financial, technical, and other qualifications of the proposed transferee or assignee shall be provided. This section shall not apply to the transfer, assignment or sale of less than thirty percent (30%) of the ownership, operation or management of the franchise. The Common Council shall not withhold approval or consent of the transfer, assignment or sale without cause and unless it is shown that the operation or management of the system will be affected to the detriment of the public by approving said transfer, assignment or sale.

(b) Notwithstanding the foregoing, the Grantee shall be entitled at its option, at any time or from time to time, without the necessity of obtaining the consent or approval of the City, to grant liens on or security interest in its right, title and interest in, to and under the franchise referred to herein, and the equity owners of the Grantee (the "Owners") shall be entitled to grant liens on and security interest in their equity interest in the Grantee, all upon such terms, covenants and conditions as the Grantee and the owners may agree upon with the party or parties to which such liens or security interest may be granted, such party or parties are hereinafter referred to as "Secured Parties", provided, however, that such liens or security interests may only be granted in connection with the obtaining by the Grantee of financing for the construction and operation of its cable system. In addition, any of the Secured Parties may, in connection with the granting of such liens and security interests, exercise all rights and remedies accruing to such Secured Party under and pursuant to the security agreements and other instruments and documents executed and delivered by and between the Grantee and the Secured Parties and the Owners and the Secured Parties, and in addition thereto, all right and remedies of a secured party under the Uniform Commercial Code as enacted in the State of Wisconsin and as otherwise available at law, including, without limitation, foreclosure and realization upon the Grantee's right, title and interest in, to and under the franchise granted pursuant hereto, and foreclosure and realization upon the Owners' equity interest in the Grantee, all without the necessity of obtaining any consent or approval of the City, except that the Secured Parties shall be required to obtain the written consent of the City prior to selling or transferring this franchise or any of the Owners' equity interest to any third party which is not affiliated with the Secured Parties. The City shall not withhold approval or consent of such sale or transfer without cause and unless it is shown that the operation or management of the system will be affected to the detriment of the public by approving such transfer of sale.

SEC. 9-6-5 COMPLETION OF CONSTRUCTION AND EXTENSION OF SYSTEM.

(a) The Grantee shall initiate construction and installation of the Broadband Telecommunications Network within one (1) month of receiving necessary authority from the Federal Communications Commission, including microwave licenses, and a Certificate of Compliance, and within thirteen (13) months shall commence operation. The Grantee shall substantially complete construction within the franchise area within eighteen (18) months after the commencement of such construction. The Grantee shall give the City Clerk notice of all approvals and license grants within ten (10) days of obtaining them. Any failure to comply with any provisions of this Section shall be grounds for termination of the franchise.

(b) The City may, in its discretion extend the time for the Grantee, acting in good faith, to perform any act required hereunder. The time for performance shall be extended or excused for any period during which the Grantee demonstrates to the satisfaction of the Common Council, that the Grantee is being subjected to delay or interruption due to any circumstances reasonable beyond its control.

(c) The Grantee shall extend the cable system to all residents within the City limits and to all residents of newly annexed areas where density of fifty (50) potential subscribers per linear miles can be obtained.

(d) The Grantee shall be allowed to furnish service to other areas than the City, provided however, that the construction or provision of services to areas other than the City shall not prohibit, impede or delay the substantial completion date of the system within the City.

SEC. 9-6-6 SERVICE AND OPERATION STANDARDS.

(a) The Grantee shall maintain and operate its Broadband Telecommunications Network in accordance with the rules and regulations of the Federal Communications Commission, the State of Wisconsin, and the City, as the same may be incorporated herein or promulgated at any time.

(b) The Grantee, whenever it is necessary to interrupt services over the Broadband Telecommunications Network for the purpose of network maintenance, alteration or repair, shall do so at such time as will cause the least amount of inconvenience to the subscribers.

(c) The Grantee shall provide a network having a minimum immediate or potential thirty-six (36) channels with immediate or potential two-way video grade capability. In addition, the network shall also have the immediate or potential capability for transmitting data grade intelligences in both forward and reverse directions.

(d) Grantee shall make provisions for local origination programming to include designation of at least one (1) channel fully devoted to such programming. Grantee shall maintain all necessary facilities and equipment for such programming and shall make all reasonable efforts to see to its accomplishment. With respect to such programming, the City encourages the cooperation and support of the commercial and non-commercial members of the community. The Grantee shall provide a minimum of ten (10) hours of locally originated programming per month. By way of illustration, not limitation, such programming may include church services, public affairs programming,

election results, school events, concerts, theater productions and programs for the elderly.

(e) The Grantee shall provide without charge and upon request within the City, one (1) connection, together with monthly basic service, to such public, parochial, non-profit private schools and City buildings as the City may hereafter designate. The City or school reserves the right at its expense to as many areas within such schools and buildings as it deems desirable without payment of any additional fees to the Grantee.

(f) The Grantee shall carry, to the extent permitted by the Federal Communications Commission, the maximum number of broadcast signals, and the Grantee shall exercise its best efforts to obtain permission from the Federal Communications Commission, or other regulatory agency having jurisdiction over the number of signals permitted, for carriage of such signals.

(g) The Grantee shall respond to all service calls seven (7) days a week and respond to any one service call within twenty-four (24) hours of any request for repair or adjustment received each day. The Grantee shall be responsible for loss of service, except to the extent that restoration of service is prevented by strike, injunction, or other cause beyond its control. Grantee shall maintain a record of service reports and of the time of restoration of service.

(h) The Grantee shall provide a local office and designate a local representative in the City to accept monthly payments. The Grantee shall maintain a customer service office twenty-four (24) hours a day response to service calls at no charge.

(i) The Grantee shall reserve two (2) channels for dedicated educational use by all schools and one (1) channel for local government use, including emergency purposes. The educational channels may be used between school buildings and classrooms to transmit educational programs or to transmit school programs into the homes of subscribers. The Grantee will make available a set of television production equipment for use by schools, local government, and the public. This will include a color television camera, video recorder, lighting equipment, processor and modulator. A local television studio capability will be made available if requested at any time by the Common Council.

(j) The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable to the Grantee to exercise its rights and perform its obligations under this Chapter and any franchise granted. All such rules, regulations, terms and conditions shall not be in conflict with any provision of law, rules promulgated by the City, or by any other governmental agency. Copies of all rules, regulations, terms and conditions, together with any amendments, additions or deletions thereto, shall be made available to members of the public for inspection during normal business hours. No such rule, regulation, condition, or any amendment, addition or deletion thereto shall take effect until made available to the public, and to the Common Council.

(k) The Grantee shall make available to the subscriber upon request a subscriber lockable means of disabling basic and/or other additional services to which the subscriber may have access, at the cost of the subscriber.

(l) The Grantee shall incorporate into the system the capacity which will permit the City, in time of emergency, to override by remote control, the audio of all channels simultaneously. The Grantee shall designate a channel which will be used for emergency broadcasting of both audio and video. The Grantee shall cooperate with the City in the use and operation of the emergency alert override system.

(m) The Grantee shall make available to each subscriber not less than two (2) service locations within each building or residence served. The Grantee shall interconnect access channels of the system with all other systems in adjacent areas, whether by direct cable connection, microwave, or other means, if possible.

SEC. 9-6-7 RATES.

(a) The Grantee shall establish charges for its services and shall submit a schedule thereof with its application. All charges shall be fair and reasonable and calculated to offset all necessary costs for provision of service, including a fair rate of return on its investment.

- (1) The Grantee may make a charge to subscribers, private or commercial, for installation and connection and reconnection to its Broadband Telecommunications Network and a monthly charge for "Basic Service".
- (2) In the event that a subscriber requests a buried service drop to his residence, the Grantee shall bury such drop upon payment of the fee therefore as set forth in its application on file with the City Clerk.
- (3) The Grantee may make a charge to subscribers for installation and connection to its network in addition to those charges set forth in Subsection (a)(1) above where unusual circumstances exist, such as remote or relatively inaccessible subscriber locations, or for an antenna switching device.

(b) The Grantee may establish charges for its services not specified in Subsection (a)(1) above. However, all such charges, including but not limited to additional services, leased channel, discrete channel, production and advertising rates, shall be made public and two (2) copies of the schedule of charges as originally established and thereafter modified, shall be filed with the City Clerk.

(c) If the Grantee shall amend the rate or service schedules or increase rates, it shall provide not less than ninety (90) days notice of such proposed amendment or proposed increase to the City Clerk. A public hearing shall be held before the Common Council before the time set for the proposed increase prior to which the Grantee shall provide such data and information as may be necessary to justify the proposed increase. A public hearing before the Common Council shall be necessary before any amendment to the service schedule, or increase to the rate schedule becomes effective if:

- (1) Such amendment to the service schedule or increase in the rate schedule is to become effective within one (1) year of the effective date of the last amendment or increase; or
- (2) Such proposed amendment to the service schedule would result in a service schedule different from the service between the Grantee and the

- subscribers of other communities served by the Grantee within a thirty (30) mile radius of the City; or
- (3) Such proposed rate schedule would be different from the rate schedule between the Grantee and the subscribers of other communities served by the Grantee within a thirty (30) mile radius of the City.

(d) An owner or operator of an apartment building, condominium, nursing home, hospital, mobile home park or other multiple dwelling facility in which other persons reside may require installation to conform to reasonable conditions necessary to protect the safety, appearance and functioning of the premises. The Grantee shall notify the owner or operator of intent to install cable television service and the Grantee shall thereafter coordinate such installation during reasonable business hours. The Grantee, or occupant or tenant may be required to indemnify the owner for any damages caused by such installation, operation, or removal, prior to granting consent for such. The Grantee may not take any action that would diminish or interfere with any tenant's use of any master or individual television antenna system in such building.

SEC. 9-6-8 AMENDMENTS TO CHAPTER.

The City may from time to time add to, modify, or delete provisions of this Chapter as it shall deem necessary in the exercise of its regulatory powers, provided that such additions, modifications or revisions are reasonable and do not adversely affect the Grantee economically. Such additions, modifications or revisions shall be made only after a public hearing for which the Grantee shall have received written notice not less than thirty (30) days prior to such hearing.

SEC. 9-6-9 RELOCATION, TEMPORARY DISCONNECTS AND REDESIGN.

The City reserves the right upon reasonable notice to require the Grantee to protect, support, temporarily disconnect, relocate or remove from the City's streets any property of the Grantee by reason of traffic conditions, public safety, street construction or vacation, change or establishment of street grade, installation of sewers, drains, water pipes, power or communications lines, tracks or other types of structure or improvements by governmental agencies or any other structures of public improvement. Reasonable notice of this provision of the Chapter shall mean thirty (30) days except in the case of emergencies, where no specific notice period shall be required. The Grantee shall have the opportunity to present alternative routes, contest the expense and necessity of the change in its facilities required by this Section, and negotiate the shared cost. In no event shall the City require removal, disconnection, or removal or relocation of the Grantee's facilities without cause.

SEC. 9-6-10 CITY'S RIGHT OF INTERVENTION.

The City shall have the right to intervene and the Grantee specifically agrees by the acceptance of a franchise not to oppose such intervention by the City in any suit or proceeding to which the Grantee is a party.

SEC. 9-6-11 CITY'S RIGHT OF INSPECTION.

The City reserves the right during the life of any franchise granted hereunder to inspect and supervise all construction or installation work performed subject to the provisions of this Chapter and to perform network measurements to insure compliance with the terms of this Chapter.

SEC. 9-6-12 EASEMENTS AND PERMITS.

(a) Any franchise granted hereunder shall not relieve the Grantee of any obligation involved in obtaining pole or conduit use agreements from any utility company or others maintaining poles or conduits in the streets of the City whenever the Grantee finds it necessary to make use of poles or conduits. The City shall grant to the Grantee authority including easements, to its public right-of-ways, streets, and other conduits for the distribution of the Grantee's system and shall exercise its right of eminent domain when the obtaining of an easement is necessary for the distribution of the Grantee's system in the public interest. The City shall require all developers of future subdivisions to include cable television services as part of any provision for utilities to serve such subdivisions.

(b) Any poles, cable electronic equipment or other appurtenances of the Grantee to be installed in, under, over, along, across, or upon a street shall be located so as to cause minimum interference with the public use of the streets and to cause minimum interference with the rights of other users of the streets or of property owners who adjoin any of the streets.

(c) In the event of disturbance of any street by the Grantee, the Grantee shall at its own expense, and in a manner approved by the City, replace and restore such street in as good a condition as before the work causing such disturbance was done.

(d) The Grantee shall construct, maintain and operate its network so as to cause minimum inconvenience to the general public. All excavations shall be properly guarded and protected and shall be replaced and the surface restored promptly after completion of the work. The Grantee shall at all times comply with all excavation requirements of the City.

(e) The Grantee shall, upon reasonable notice from any person holding a building moving permit issued by the City, temporarily alter its facilities to permit the moving of such building. The actual cost of said altering shall be borne by the person requesting the altering and the Grantee shall have the right to request payment in advance. For the provision of this Chapter "reasonable notice" shall be construed to mean at least fifteen (15) days prior to a move.

SEC. 9-6-13 REPORTS.

(a) The Grantee shall file annually with the City Clerk, not later than ninety (90) days after the end of its fiscal year during which it has accepted a franchise under this Chapter and within ninety (90) days after the end of each subsequent fiscal year, a total facilities report setting forth the total physical miles of plant installed or in operation

during the fiscal year, including an as-built system map showing the location of all local apparatus with the office of the Director of Public Works.

(b) The Grantee shall file annually with the City Clerk, not later than ninety (90) days after the end of its fiscal year during which it has accepted a franchise under this Chapter and within ninety (90) days after the end of each subsequent fiscal year, all records regarding complaints required by the Federal Communications Commission and the resolution thereof.

(c) The City reserves the right during the life of any franchise granted under this Chapter to have access at all normal business hours and upon the giving of notice of not less than seventy-two (72) hours, to the Grantee's engineering plans, accounting records, and contracts.

SEC. 9-6-14 OWNERSHIP AND OPERATION INFORMATION.

The Grantee shall file annually with the City Clerk not later than ninety (90) days after the end of its fiscal year during which it shall have accepted a franchise under this Chapter and within ninety (90) days after the end of each subsequent fiscal year the following supplemental information:

(a) A list of all current shareholders and bondholders both of record or beneficial, and a list of all shareholders who individually or as a concerted group hold five percent (5%) or more of the voting stock of the corporation, or a list of all partners, both general and limited.

(b) A current list of all Grantees, officers and directors; including addresses and telephone numbers.

(c) Copies of all pertinent operational agreements or contracts, including pole-use agreements, entered into by the Grantee during the fiscal year in the conduct of its business under a franchise granted hereunder. Copies of individual subscribers' agreements are not to be filed with the City, but shall be available upon request at the City.

(d) The names, addresses and current business and home phone numbers of the Telecommunications Network resident manager and engineer. Any changes therein to be promptly reported.

(e) One (1) copy of all types of subscriber agreements.

(f) Copies of all rules and regulations promulgated by the Grantee during the fiscal year in the conduct of its business.

SEC. 9-6-15 SALES AND SERVICING OF BROADCAST RECEIVERS.

(a) The Grantee may neither directly or indirectly engage in the wholesale or retail sale, servicing or repair of television receivers or antennas, nor directly or indirectly require of any subscriber the servicing by any designated television-radio service business.

(b) The Grantee may neither directly or indirectly engage in installation repair of distribution systems, other than its own, within apartments, motel, hotel or other commercial complexes.

SEC. 9-6-16 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS.

(a) **Unauthorized Connections Prohibited.** It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency, without the expressed consent of the Grantee to possess or make any connection, extension, or division whether physically, acoustically, inductively, electronically or otherwise with or to any segment of a franchised Broadband Telecommunications Network for any purpose whatsoever, unless permitted herein.

(b) **Removal or Destruction Prohibited.** It shall be unlawful for any firm, person, group, company, corporation, or governmental body or agency to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of a franchised Broadband Telecommunications Network for any purpose whatsoever.

(c) **Penalties.** Violation of either Subsections (a) or (b) above shall result in the violator reimbursing the Grantee for losses incurred and a forfeiture not to exceed Fifty Dollars (\$50.00).

SEC. 9-6-17 SUBSCRIBER PRIVACY.

(a) **Use of Data from Subscriber.** A Grantee, City or any person shall not initiate or use any form, procedure or device for procuring information or data from a cable subscriber's terminals by use of the cable system without prior authorization from each subscriber so affected. Valid authorization shall mean approval from the subscriber for a period of time not to exceed one (1) year and shall not have been obtained from the subscriber as a condition of service.

(b) **Subscriber Data.** The City or Grantee or any person shall not, without prior written valid authorization from the Common Council, provide any data identifying designated subscribers.

(c) **Subscriber Agreements.** Any agreement or contract such as necessary under Subsections (a) or (b) above shall not be part of any other contract or agreement and shall not be a condition of subscribing to the system.

SEC. 9-6-18 CONSTRUCTION AND NETWORK TECHNICAL STANDARDS AND MEASUREMENTS.

The technical standards including measurements of the construction and system to be operated in the City shall comply with the minimum standards established by the Federal Communications Commission.

SEC. 9-6-19 LIABILITY AND INDEMNIFICATION.

(a) The Grantee shall maintain, and by its acceptance of any franchise granted hereunder agrees that it will maintain throughout the term of the franchise, a general comprehensive liability insurance policy against liability for loss or damage for personal injury or death or property damage occasioned by the operations of the Grantee under this franchise in the amount of:

- (1) Five Hundred Thousand Dollars (\$500,000.00) for bodily injury or death to any one (1) person, and One Million Dollars (\$1,000,000.00) for bodily injury or death resulting from any one (1) accident; and
- (2) Five Hundred Thousand Dollars (\$500,000.00) for property damage resulting from any one (1) accident.

(b) The Grantee shall save the City and its agents and employees harmless from and against all claims, damages, losses, and expenses, including attorney's fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arises out of but not of the installation, operation or maintenance of the Broadband Telecommunications Network authorized herein; whether or not any act or omission complained of is authorized, allowed or prohibited by this Chapter and any franchise granted hereunder. This provision shall not apply to acts of the City, its agents or employees.

(c) The insurance policies mentioned in Subsection (a) shall be obtained from the same company and shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Grantee under the terms of this Chapter and shall contain the following endorsement:

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

(d) The Grantee shall maintain at all times a performance bond in the amount of Five Thousand Dollars (\$5,000.00) to apply toward refunds of prepaid subscriber fees in the event of insolvency or business failure of the Grantee or for any other default under this Chapter.

SEC. 9-6-20 COMPLIANCE.

(a) In the event any valid law, rule or regulation of any governing authority or agency having jurisdiction (including but not limited to the Federal Communications Commission) contravenes the provisions of this Authorization, then the provisions hereof shall be superseded by any such valid law, rule or regulation. The Grantee agrees to fully comply with all local, state, federal and Federal Communications Commission's rules, orders, reports and laws presently in effect or which may become effective in the future.

(b) Any modification or amendments to the Commission's rules relating to franchise standards shall be incorporated into this franchise within one (1) year of the adoption of

the modifications or amendments or at the time of franchise renewal, whichever comes first.

SEC. 9-6-21 FEES.

(a) **Filing Fee.** To offset its administrative costs with respect to the consideration of applications and the granting of a franchise, there shall be a non-refundable application fee in the amount of Two Hundred Dollars (\$200.00) which shall be paid with the submission of an application for franchise.

(b) **Annual User Franchise Fee.**

- (1) The Grantee shall pay to the City an annual user franchise fee to be utilized by the City to offset its regulatory and administrative costs incurred hereunder. Such fee shall be placed in a special nonlapsing account which shall be used only in connection with providing CATV services.
- (2) The annual user franchise fee shall be five percent (5%) of the total annual gross revenue. The annual user franchise fee is subject to annual review for increase or decrease subsequent to the fourth year of operation. Such fee shall be paid by March 1st for the previous calendar year.
- (3) This payment shall be in addition to any other payment owed to the City by the Grantee and shall not be construed as payment in lieu of municipal property taxes or other state, county or local taxes or any applicable pole fees which may be due the City Utilities for use of their poles.

SEC. 9-6-22 FRANCHISE APPLICATION.

As a prerequisite to adoption of this Chapter, the City requires the Grantee to file with the City Clerk an application containing the following information and provisions on forms as furnished by the City Clerk:

- (a) The name and business address of the applicant, date of application and signature of the applicant or appropriate corporate officer.
- (b) Payment of filing fee as set forth in Section 9-6-21 hereunder.
- (c) A general description of the applicant's proposed operation which shall include a written statement of the compliance to the initial service area.
- (d) A statement of the television and radio services proposed including both off-the-air and locally originated signals.
- (e) A statement setting forth a description of the television channels and programming facilities to be made available for public, municipal and educational usage over and above those channels and programming facilities required to be made available either by the Federal Communications Commission or the provisions of this Chapter.

- (f) A statement of the applicant's proposed Schedule of Charges as set forth by the provisions of Section 9-6-7 hereunder.
- (g) A statement detailing the corporate organization of the applicant, if any, including the names and addresses of the applicant's officers and directors and the division of shares between shareholders.
- (h) A statement describing all intra-company relationships of the applicant including parent, subsidiary or affiliated companies.
- (i) A statement setting forth all contracts whether written or oral existing between the applicant and any other person, firm, or group or corporation with respect to any franchise awarded hereunder and the conduct of the operation thereof.
- (j) A financial statement for the previous fiscal year together with a Board of Directors Resolution authorizing the obtainment and expenditure of such Broadband Telecommunications Network contemplated hereunder. A copy of the most recent annual report shall be included.
- (k) Suitable written evidence, accompanied by a projected ten (10) year operations balance sheet, from a recognized lending or funding agency, or agencies, addressed both to the applicant and to the City advising that the applicant's financial ability and planned operation have been analyzed by the agency or agencies and that this lending or funding agency or agencies is prepared to make the required funds available to applicant if he is awarded a franchise.
- (l) A brief technical description of the type of electronic equipment and coaxial proposed for use by the applicant.
- (m) A statement from the applicant's senior technical staff member or consultant advising that he has reviewed the Network Description, the Network Technical Standards, Performance Measurements, Channels to be provided, and Service Standards and that the applicant's planned network and operations thereof will meet all the requirements set forth herein.
- (n) A statement as to whether the applicant has applied for or been granted a franchise in any other City.
- (o) A statement as to whether the applicant or any of its officers or directors or holders of five percent (5%) or more of its voting stock has in the past ten (10) years been charged with or convicted of crime other than a traffic offense and the disposition of such case.
- (p) A statement indicating whether the applicant will conform to all of the provisions of this Chapter.
- (q) Any other information as may be required by the Common Council.

CHAPTER 7

Miscellaneous Utilities Regulations

9-5-1	Single Public Utility
9-5-2	Water Service Limits
9-5-3	Private Well Abandonment
9-5-4	Telecommunications Services
9-5-5	Use of Public Rights-of-Way

SEC. 9-7-1 SINGLE PUBLIC UTILITY FOR WATER, SEWER AND ELECTRIC.

(a) Pursuant to the provisions of Sec. 66.0819, Wis. Stat., there shall be a single public utility for the City. This single public utility shall be formed by combining the water works and electric plant and system owned by the City with the sewage disposal system also owned by the City.

(b) The public utility shall operate the water works, electrical system and also be responsible for the collection, treatment and disposal of sewage and all equipment necessary to the operation of these systems.

Cross Reference: Section 2-4-9.

SEC. 9-7-2 WATER SERVICE LIMITS.

In accordance with Sec. 66.0813, Wis. Stat., the limits of service of the City water utility in unincorporated areas are as follows:

(a) **Western Avenue.** Commencing at the west line of the southeast quarter of Section 21, Town 15 North, Range 21 East, on both sides of State Trunk Highway 23 (Western Avenue extended) and extending northwesterly 2,355 feet along State Trunk Highway 23 (Western Avenue extended).

(b) **Suhrke Road.** Town Hall, Town of Plymouth, Suhrke Road.

(c) **Eastern Avenue.** Mills Fleet-Farm, State Trunk Highway "Business 23" (Eastern Avenue extended) on the northwest corner of the intersection with State Trunk Highway 57.

SEC. 9-7-3 PRIVATE WELL ABANDONMENT.

(a) **Purpose.** The purpose of this Section is to prevent contamination of groundwater and to protect public health, safety and welfare by assuring that unused, unsafe or noncomplying wells, or wells which may serve as conduits for contamination, or wells which may be illegally cross-connected to the municipal water system, are properly abandoned. This Section specifically prohibits the drilling of private wells within the City when public water service is available, as determined by the Common Council.

(b) **Applicability.** This Section applies to all wells located on premises served by the Plymouth municipal water system.

(c) **Definitions.** The following definitions shall be applicable in this Section:

- (1) Municipal Water System. A system for the provision to the public of piped water for human consumption when such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) year-round residents owned or operated by a city, village, county, town, town sanitary district, utility district or public institution as defined in Sec. 49.10(12)(f)1, Wis. Stat., or a privately owned water utility serving any of the above.
- (2) Noncomplying. A well or pump installation which does not comply with the provisions of Ch. NR 812, Wis. Admin. Code, in effect at the time the well was constructed, a contamination source was installed, the pump was installed or work was done on either the well or pump installation.
- (3) Pump Installation. The pump and related equipment used for withdrawing water from a well including the discharge piping, the underground connections, pitless adapters, pressure tanks, pits, sampling faucets and well seals or caps.
- (4) Unsafe. A well or pump installation which produces water which is bacteriologically contaminated or contaminated with substances in exceedance of the standards of Chs. NR 809 or 140, Wis. Admin. Code, or for which a Health Advisory has been issued by the Department of Natural Resources.
- (5) Unused. A well or pump installation which is not in use or does not have a functional pumping system.
- (6) Well. An excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater for consumption or other use.
- (7) Well Abandonment. The filling and sealing of a well according to the provisions of Ch. NR 812, Wis. Admin. Code.

(d) **Abandonment Required.** All wells located on premises served by the municipal water system shall be abandoned in accordance with the terms of this Section and Ch. NR 812, Wis. Admin. Code, by or no later than one (1) year from the date of connection to the municipal water system, whichever occurs last, unless a well operation permit has been obtained by the well owner from the Common Council.

(e) **Well Operation Permit.** The Common Council may grant a permit to a private well owner to operate a well for a period not to exceed five (5) years providing the conditions of this Section are met. An owner may request renewal of a well operation permit by submitting information verifying that the conditions of this Section are met. The Common Council, or its agent, may conduct inspections or have water quality tests conducted at the applicant's expense to obtain or verify information necessary for consideration of a permit application or renewal. Permit applications and renewals shall be made on forms provided by the Utilities Manager. The following conditions must be met for issuance or renewal of a well operation permit:

- (1) The well and pump installation meet or are upgraded to meet the requirements of Ch. NR 812 Wis. Admin. Code;
- (2) The well construction and pump installation have a history of producing bacteriologically safe water as evidenced by at least two (2) samplings taken a minimum of two (2) weeks apart. No exception to this condition may be made for unsafe wells, unless the Department of Natural Resources approves, in writing, the continued use of the well;
- (3) There are no cross-connections between the well and pump installation and the municipal water system; and
- (4) The proposed use of the well and pump installation can be justified as being necessary in addition to water provided by the municipal water system.

(f) **Abandonment Procedures.**

- (1) All wells abandoned under the jurisdiction of this Section or rule shall be abandoned according to the procedures and methods of Ch. NR 812, Wis. Admin. Code. All debris, pumps, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.
- (2) The owner of the well, or the owner's agent, shall notify the Utilities Manager at least forty-eight (48) hours prior to commencement of any well abandonment activities. The abandonment of the well shall be observed by representatives of the municipal water utility.
- (3) An abandonment report form, supplied by the Department of Natural Resources, shall be submitted by the well owner to the Utilities Manager and the Department of Natural Resources within ten (10) days of the completion of the well abandonment.

(g) **Penalties.** Any well owner violating any provision of this Section shall upon conviction be punished by forfeiture pursuant to Section 1-1-7 of the City of Plymouth Code of Ordinances and the cost of prosecution. Each day of violation is a separate offense. If any person fails to comply with this Section for more than ten (10) days after receiving written notice of the violation, the municipality may impose a penalty and cause the well abandonment to be performed and the expense to be assessed as a special tax against the property.

SEC 9-7-4 USE OF PUBLIC RIGHTS-OF-WAY.

- (a) Placement permit required. The facilities of any broadband telecommunications provider or public utility which shall desire to locate its facilities within public rights-of-way in the City of Plymouth shall obtain a permit from the City Administrator/Utilities Manager or his/her designee as to the specific location thereof prior to construction or placement. Such facilities, including transmission and distribution lines, equipment, pedestals, and any other above-ground structures, shall be installed, located, and placed as to minimize interference with the use of public rights-of-way by others, including other communications facilities and utilities, the reasonable convenience of property owners who adjoin such rights-of-way, and the general public use, and shall give primary consideration to public safety and aesthetics, and shall at all times be maintained

in a safe, adequate, substantial and generally aesthetically pleasing condition, and in good order and repair. Each provider or utility shall utilize existing poles, towers, pedestals, conduits and other facilities whenever possible and shall not install any new, different or additional poles, towers, conduits, pedestals, or other facilities without the consent of the permitting authority. Co-location of all such facilities is encouraged if at all possible, irrespective of any costs or fees that may be incurred by the provider or utility therefore.

(b) Appeal. In the event any applicant under this section shall be aggrieved by a decision, or lack of timely decision, of the City Administrator/Utilities Manager or her/her designee, such applicant may make appeal to the Plan Commission pursuant to the provisions of PMC, Title 4.”

Section 2. Severability. Should any portion of this Ordinance or the affected Municipal Code Section be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected.

Section 3. Effective Date. This Ordinance shall take effect the day after publication or posting.

Enacted on February 26, 2019.

CITY OF PLYMOUTH
DONALD O. POHLMAN, Mayor
PATRICIA HUBERTY, Clerk