

City of Birchwood Village Planning Commission

February 28, 2012 Meeting Minutes

Date: February 29, 2012
From: Doug Danks
To: Planning Commission Members
City of Birchwood Village City Council
Ben Eggan, City of White Bear Lake Building Official

Attendees: Len Pratt, Planning Commission
Randy Felt, Planning Commission
Doug Danks, Planning Commission
Ben Eggan, City of White Bear Lake Building Official

Item:

1. Pratt called the Planning Commission meeting to order at 7:27 pm. The purpose of the meeting is to review and comment on proposed changes to City of Birchwood Village Zoning Ordinances.
2. Felt moved and Pratt seconded to approve Planning Commission meeting minutes from August 2, 2011. Motion passed unanimously with one abstention from Danks.
3. Pratt thanked Eggan for attending meeting.
4. The Planning Commission reviewed the revised Ordinance 203. Felt moved and Pratt seconded to approve revised Ordinance 203 with the following conditions:
 - A. Reference all fees under Ordinance 701 and delete references to fees under Ordinance 203.
 - B. City council should conduct annual review of permit system fees to align with City of White Bear Lake.
 - C. Eggan noted that Minnesota State Building Code 1300.0160 requires that plan review fee be established by municipalities, except for minor work exemption such as roofing replacement. The current plan review fee language in Ordinances aligns with City of White Bear Lake. Planning Commission recommends maintaining current plan review fee language in Ordinances with exemption for minor work, publishing fee language with resolution and posting fee language on City of Birchwood Village website.

Motion passed unanimously.

5. The Planning Commission reviewed the revised Ordinance 205. Felt moved and Pratt seconded to approve revised Ordinance 205 as submitted. Motion passed unanimously.
6. The Planning Commission reviewed the revised language for Ordinances 301 and 306, along with the new Ordinance 305. Felt moved and Pratt seconded to approve the revisions to Ordinances 301 and 306, and add the new Ordinance 305 with the following conditions:

- A. Correct 305.170.1 to read "Interim Use Permit" in lieu of "Conditional Use Permit".
 - B. Planning Commission recommends adding language to 305.170.2 providing just cause before inspection of premises is undertaken. Possible just cause for inspection could include written complaint against property owner or violation of requirements and standards for home occupations under 305.160.
7. The Planning Commission reviewed the new Ordinance 618. Felt moved and Pratt seconded to approve new Ordinance 618 (and repeal of 615.040) as submitted. Motion passed unanimously.
 8. The Planning Commission reviewed the new Ordinance 619. Felt moved and Pratt seconded to approve new Ordinance 619 as submitted. Motion passed unanimously.
 9. The Planning Commission asks for clarification from the City Council on how enforcement of new ordinances will be addressed. Is enforcement assigned to a particular council member or city staff member? If not, are the enforcement duties shared on a volunteer or assigned basis, by council members or city staff? Is council action required to initiate an Investigation under Ordinances 305 and 316?
 10. Meeting adjourned 8:50 pm.

To: City of Birchwood Village Councilmembers
City of Birchwood Village Planning Commission

From: Bryan J. McGinnis
194 Wildwood Avenue

Date: March 5, 2012

Subject: Proposed Changes in Ordinances on Home Occupations and Interim Uses

I am sorry that I was not aware that the recent Planning Commission meeting time was changed from the traditional, and as noted in Code 303 and the City website, "first Tuesday of each month". Therefore, I did not meet my objective of giving this material to the Planning Commission for review.

Please enter the following recommendations and comments into the official record of the March 13, 2012 Public Hearing on Code Sections 301, 305 and 306. I will be at the meeting.

I totally support the changes that will establish duration limits for Home Occupations that will be implemented in these changes. I believe the City wanted to have these limitations when codes relating to Home Occupations were last revised, but at that time it was believed that they were not allowed under State laws.

I recommend that two additional sections 305.180 and 305.190 be added to Code 305 as proposed in Mayor Mitchell's January 5, 2012 Memorandum to the City Council. Some of the benefits and justification for these additions are included in sections I of each addition.

305.180 INTERIM USE PERMIT LOG

1. To help assure compliance and enforcement of 305.070 TERMINATION, 305.160 REQUIREMENTS AND STANDARDS FOR HOME OCCUPATIONS, and 305.170 INSPECTION, the City shall maintain a up-to-date *Interim Use Permit Log* of all issued and active Interim Use Permits. This Log shall be available to any member of the public. The City may use this Log to monitor termination dates, to schedule Inspections (305.170), for example if required as a Permit Condition (305.050), to monitor land use trends, and for other lawful purposes in enforcing Code 305 and other City codes.
2. Each entry on the Interim Use Permit Log shall include the following information.
 - a. Name of property owner
 - b. Address of the property
 - c. A brief description of the use
 - d. Schedule for commencement of the use
 - e. Termination date or event, if any, as stated in the permit
 - f. Termination date five years after the date of issuance
 - g. Note of observations and actions taken after any inspections
 - h. Comments

305.190 HOME OCCUPATIONS LOG – NO PERMIT REQUIRED

1. To help assure compliance and enforcement of 305.160 REQUIREMENTS AND STANDARDS FOR HOME OCCUPATIONS, and 305.170 INSPECTION, the City shall maintain a *Home Occupation (no required permit) Log* of all Allowed Home Occupations, for which no permit is required per 305.110 and which are known to City officials. This Log shall be available to any member of the public. The City may use this Log to schedule Inspections (305.170), monitor land use trends, and for other lawful purposes in enforcing Code 305 and other City codes.
2. Each entry on the Home Occupation (no required permit) Log shall include the following information.

- a. Name of property owner
- b. Address of the property
- c. A brief description of the Home Occupation use
- d. Date use began
- e. Note of observations and actions taken after any inspections
- f. Comments

I recommend the following changes/additions to 301 and some sections of Section 305.

301.090 INTERIM USES:

Since defined allowed Home Occupations do not require a permit, change the last sentence to read:

An Interim Use Permit is may be required for a Home Occupation.

To help the code reader get to the Interim Uses section, add the following to the end of 301.090 INTERIM USES:

See 305 ZONING CODE: INTERIM USE PERMIT

.....
 305.20 PERMIT APPLICATION

Include "Address of Property" as another required information item.

.....
 305.160 REQUIREMENTS AND STANDARDS FOR HOME OCCUPATIONS

Item 2, Use of accessory building(s), e.g. garages, should be included in the percentage allowed since Item 1 includes accessory buildings, and some Home Occupations previously permitted as CUPs are carried out in accessory structures.

A possible wording is:

- 2. The nature of the home occupation shall be clearly secondary and incidental to the use of the building principal dwelling and accessory building(s) as a dwelling unit. No more than 20% of the gross floor area of the unit shall be dedicated to the home occupation.

.....
 305.70 INSPECTION

Phrase "Conditional Use Permit" should be replaced by "Interim Use Permit".

Do any of the proposed changes have any affect on any Home Occupation uses now covered under Conditional Use Permits?

Sincerely,

Bryan J. McGinnis

EXPLANATION OF INTERIM USE PERMIT ORDINANCES

CHAPTERS 301, 305, and 306

I. Introduction

The Birchwood City Code provides for the issuance of Conditional Use Permits. Section 301.070 and chapter 306. The Code recognizes six categories of projects for which a Conditional Use Permit may be issued. These include two types of land disturbance activities, swimming pools, tennis courts, solar energy systems, and home occupations. Section 301.070.

According to the League of Minnesota Municipalities, in a memorandum on Frequently Asked Questions about Conditional Use Permits published on September 8, 2008, "A conditional use is a land use designated in a zoning ordinance that is specifically allowed in a zoning district so long as certain standards are met." Further, "A conditional use permit is a document a city issues to grant a conditional use when the general and specific ordinance standards have been met by the applicant."

Authorization for municipalities to issue Conditional Use Permits is provided in Minnesota Statutes § 462.3595.

The Minnesota Supreme Court has recognized that conditional uses "run with the land." *Northpointe Plaza v. City of Rochester*, 465 N.W.2d 686, 689 (Minn. 1991). That means that CUPs are perpetual in nature and "remain in effect as long as the conditions agreed upon are observed." Minnesota Statutes § 462.3595, subd. 3. CUPs must be recorded with the county. *Id.*, subd. 4.

In 1989, the Legislature passed a new law creating the concept of Interim Use Permits. Minnesota Statutes § 462.3597. The difference between a CUP and an IUP is that Interim Use Permits are not perpetual but authorize a "temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it." *Id.*, subd. 1.

In July 2011 a resident filed a request with the City for a Conditional Use Permit authorizing the maintenance of a cabinetry business in his garage. Home occupations are presently recognized as a land use that the City may authorize through the issuance of a Conditional Use Permit. In the course of its deliberation on the matter, the Council considered whether it was appropriate to authorize a home occupation on a perpetual basis, which is what a CUP would do. An Interim Use Permit seemed like a more appropriate tool for authorizing a home occupation that met certain standards.

The ordinance amendments and new chapter 305 are intended to provide for the issuance of Interim Use Permits. A search of the Internet will show that a number of cities and counties in Minnesota have specific ordinances allowing for the issuance of Interim Use Permits and

distinguishing IUPs from CUPs. The city of Mahtomedi has an Interim Use Permit ordinance. Section 11.01, subd. 8-22. White Bear Lake does not (although White Bear Lake is a charter city, not a statutory city like Birchwood and Mahtomedi). Other examples include the cities of Bloomington (Section. 21.501.05), Lakeville (Title 11, chapter 5), and Woodbury (section 24-45) and the counties of Benton (chapter 11.6.3), Scott (chapter 207), and Sherburne (section 16.2).

With this background in mind, the following discussion addresses the specific changes proposed in the City Code.

II. Chapter 301 (ZONING CODE: GENERAL PROVISIONS)

A. 301.070 CONDITIONAL USES

Section 301.070 is amended to delete item 1.f. (Home occupation). The intent of the amendments is to eliminate Conditional Use Permits for home occupations because a home occupation is not intended to “run with the land” and continue in perpetuity, so it is necessary to eliminate the reference to home occupations in this provision.

B. 301.090 INTERIM USE PERMIT

Section 301.090 is a new section adding a definition of “Interim Use.” The definition is taken from the statute – Minnesota Statutes § 462.3597. In addition to the definition, this section also provides that an Interim Use Permit is not required if a Building Permit, a Conditional Use Permit, or a Zoning Permit is issued for the use. This is similar to the language in section 301.070 saying a CUP is not required if a Building Permit has been granted and to language in section 301.080 saying that a Zoning Permit is not required if a Building Permit or Conditional Use Permit is issued. It makes sense to not require an Interim Use Permit if the project or use qualifies for one of the other permits.

Section 301.070 identifies the projects for which a Conditional Use Permit can be applied for (land disturbance activities, swimming pools, tennis courts, solar energy systems, and home occupations), and section 301.080 identifies the projects that require a Zoning Permit (smaller land use activities). This new section 301.090, however, does not identify the projects that can be authorized through an Interim Use Permit, except for home occupations. Other projects that are not specifically identified as the type requiring a Conditional Use Permit or a Zoning Permit would be eligible for an Interim Use Permit as long as the requirements of chapter 305 are met. Of course, a use that is not permitted by specific ordinances of the city would not be entitled to an Interim Use Permit.

III. CHAPTER 306 ZONING CODE: CONDITIONAL USE PERMITS

Some minor changes are required in chapter 306 to recognize that a separate chapter will address Interim Use Permits if the new ordinance is adopted.

A. 306.070 HOME OCCUPATIONS

This section is proposed to be deleted in its entirety. Since a Conditional Use Permit is no longer available for home occupations, there should be no provisions in chapter 307 relating to home occupations. Many of the existing requirements in this section, however, are carried over to the new ordinance, as explained below with the explanation of the chapter 305 provisions.

B. 306.080 NOTIFICATION AND PROCEDURES FOR CONDITIONAL USE PERMITS.

Section 306.080 is a procedural provision establishing the requirements for administering an application for a CUP. It is appropriate to add language to part 1 of that section to recognize that the City must also give such notice of a CUP application as may be required by state statute. Minnesota Statutes § 462.3595, subd. 2 requires that a governmental body give the same notice of a CUP application that is required for a zoning ordinance change in section 462.357, subd. 3. Subdivision 3 of section 462.357 requires that notice be published in the official newspaper, in addition to mailing notice to nearby neighbors, at least ten days in advance of a public hearing on the matter.

A new item 10 is also proposed to be added to this section. Item 10 provides that a decision on a Conditional Use Permit must be made within the time limit expressed in Minnesota Statutes § 15.99. That statute requires a decision to be made on a CUP application within sixty days (with some provision for granting an extension). The City does not want a CUP to be issued upon the City's failure to meet the deadline so this is an appropriate provision to include in the ordinance as a reminder of the deadline.

C. 306.090 - REVOCATION

The main intent here is to repeal any reference to home occupations in item 2 since CUPs are no longer the appropriate permitting mechanism for home occupations. Also, language regarding when a CUP becomes null and void for failure to be made use of is clarified to indicate that the City Council could allow a permittee to have more than one year from the time the CUP is issued to implement the permit.

305 ZONING CODE: INTERIM USE PERMITS

Chapter 305 is all new material, and it provides for the issuance of Interim Use Permits.

The next available higher chapter number in the 300 series (LAND USE REGULATIONS) is chapter 309, although chapter 305 has been reserved for future use and is available. Rather than number the new ordinance on Interim Use Permits as chapter 309, it was decided to use chapter 305 for the Interim Use Permits provisions because this would allow Conditional Use Permits (chapter 306) and Zoning Permits (chapter 307) to follow in sequence.

I. 305.010 - GENERALLY

This provision is a general statement that the City Council may issue Interim Use Permits for temporary uses of property. What kind of uses may be authorized on an interim basis is not defined in the ordinance. This is the typical way that local units of government provide for the issuance of Interim Use Permits. As long as the use satisfies the criteria of the ordinance, and is not in violation of another provision of the code, the City Council may elect to authorize an interim use under appropriate circumstances.

II. 305.020 – PERMIT APPLICATION

This section sets forth the information that an applicant for an Interim Use Permit must submit to the City. The City will, after the ordinance is adopted, prepare a form that applicants can use to apply for an IUP.

The categories are self-explanatory. The language was taken from the ordinance adopted by the City of Bloomington, Minnesota. Bloomington city code, section 21.505.01(i). Obviously, the applicant must sign the form and pay the application fee. The City needs information about the use to be made, the schedule, and details of the project including a floor plan or site plan. The information that is required to be submitted in an application will allow the City to begin its evaluation of the project.

III. 305.030 – PROCESS FOR CONSIDERATION OF APPLICATION

The process proposed for consideration of an application for an Interim Use Permit is to refer the matter to the Planning Commission. The Planning Commission is the appropriate body to consider the application since it is familiar with the building code and the zoning code. The ultimate decision, of course, rests with the Council but a recommendation from the Planning Commission will be helpful to the Council.

A separate item is included stating that the Council must make a decision in a timely fashion, as required by Minnesota Statutes § 15.99. Again, it is important that the Council be aware of its obligation to make a decision within the 60 days, or longer period if properly extended, allowed by the statute.

IV. 305.040 – STANDARDS GENERALLY

The standards set forth in this section are the ones that municipalities apply to applications for Interim Use Permits. The language was taken from the City of Bloomington ordinance. Section 21.505.01(e).

If an applicant is unable to satisfy these standards, the permit will be denied.

V. 305.050 – PERMIT CONDITIONS

As with other permits the City may issue, it may be necessary and appropriate to impose conditions on the permittee. This section recognizes that fact. In most cases all permit conditions will be developed with the cooperation and acquiescence of the applicant, but in rare cases conditions may have to be imposed over the objection of the applicant.

Four specific permit conditions are recognized in the section. The first is mitigative measures to reduce potential adverse effects. This language recognizes that a permit applicant must consider methods to minimize the impact of the use on the land, the neighbors, and the environment. Without the ability to impose these kinds of conditions, a project may have to be denied rather than approved with mitigation.

The second authorizes the City to conduct inspections of the premises. As the property is put to the proposed use authorized by the permit, it may be necessary to periodically inspect the property to ensure that the permit conditions and the code are being followed. The third specific type of condition spelled out is the requirement to post a financial guarantee. This may not be a condition that is required in all Interim Use Permits but if the use is of a type that may result in significant cleanup activities at the end of the permit, it may be appropriate to require the applicant to post some form of financial guarantee to ensure that the City is not stuck with a cleanup bill. The fourth requirement is that various city code provisions might be imposed as conditions in the permit. This approach would not change the permittee's obligation to comply with the city code but would be a reminder that the permit is dependent on compliance.

Finally, a general clause is included to recognize that the City Council may include any conditions that are reasonable and appropriate. In order for a condition to be reasonable and appropriate, the record would have to support the imposition of the condition and it would have to be within the City's authority to impose it.

VI. 305.060 – SUSPENSION OR REVOCATION

This is another provision where the language was taken from the Bloomington ordinance, section 21.505.01(g), although it is a common provision with municipal ordinances allowing interim uses. It simply provides that the City Council may suspend or revoke an Interim Use Permit if

violations of the city code, state law, or the permit occur. The City could not suspend or revoke the permit without affording the permittee due process, which means the permittee must have notice and opportunity to be heard, but it is a good idea to express in the ordinance that an IUP is subject to suspension or revocation for noncompliance. The specifics of that process are not spelled out in the ordinance but the City will ensure that the proper procedural steps are followed by any IUP is suspended or revoked.

VII. 305.070 – TERMINATION

There are five events spelled out in this section that could lead to termination of an Interim Use Permit. The language is worded to make the termination automatic upon the occurrence of any of the events.

The first termination event is the date of termination specified in the permit or the specific event identified in the permit. By definition an Interim Use Permit is an authorization that has a specific termination trigger – a date or an event. If that date arrives or the event occurs, the permit terminates without any further action by the Council.

The second termination trigger is a change in the zoning regulations that would no longer permit the use. An example would be an IUP for a home occupation that was allowed when the permit was issued but that was later prohibited by a change in the city code.

The third event is a failure on the part of the permittee to begin putting the property to the interim use allowed within six months of issuance of the permit. This is appropriate to give the City the ability to terminate the permit and take a new look at the project if the permittee still wanted to go ahead. Six months should be time enough to at least start a project that has a limited life anyway.

The fourth event that will cause the permit to be terminated is if the permittee begins use of the property as allowed but then stops for a period of one year or longer. Again, if the property is not going to be used for the intended use, then the permit may be properly terminated.

Finally, the last event, which will terminate the permit if no other trigger comes into play, is five years from issuance. This is the same as saying that no Interim Use Permit can be for longer than a five year period. Again, since it is an interim use that is being permitted, five years should be long enough to carry out the project. If more time is needed after five years, there is nothing in the ordinance that prohibits the person from reapplying for a new permit.

VIII. HOME OCCUPATIONS

Up to this point, the provisions in chapter 305 apply generally to any interim use to be permitted. However, since the major reason for adopting this new chapter is to address home occupations, it makes sense to specifically address home occupations. The requirements in the 100 series apply only to home occupations.

A. 305.100 – HOME OCCUPATIONS GENERALLY

This paragraph is an introductory provision describing the intention of the new ordinance. The first sentence is presently found in the existing ordinance, section 306.070. The next two sentences simply describes that a person may apply for an Interim Use Permit for a home occupation if the occupation is not allowed by ordinance nor prohibited by the ordinance.

B. 305.110 – ALLOWED HOME OCCUPATIONS

The list of home occupations that are allowed is taken from the existing ordinance, section 306.070, item 1. The only change is to eliminate the phrase “similar occupations as determined by the city staff and city council.” This language was deleted because any additional occupations that are to be allowed should be addressed through an amendment to the ordinance, not by some other process. Also, because home occupations that are not on the list of allowed occupations can now be authorized by the issuance of an Interim Use Permit (if they are not on the prohibited list), the process outlined in chapter 305 will provide an appropriate process for considering the unlisted occupation.

C. 305.120 – PROHIBITED HOME OCCUPATIONS

The list of home occupations that are allowed is taken from the existing ordinance, section 306.070, item 2. Again, the only difference is that the phrase “or other objectionable activities as determined by the city staff or city council.” (The existing language uses the word “or” between staff and council, whereas the language in item 1 described above uses the word “and.”) For the same reasons just discussed above, it is appropriate to require an ordinance amendment if an additional home occupation is to be added to the list of prohibited occupations.

D. 305.130 – HOME OCCUPATIONS ALLOWED BY INTERIM USE PERMIT

This provision recognizes that for those occupations that are not allowed outright, and thus need no permit, or prohibited, so no permit can be issued, an Interim Use Permit can be issued authorizing the home occupation.

E. 305.140 – APPLICATION FOR AN INTERIM USE PERMIT

This section lays out the information the City requires as part of an application for an IUP for a home occupation. This information is in addition to any information required under section 305.020 for any IUP application.

Items 1, 2, 3 and 7 are identical to what is presently found in section 306.070, item 3. Items 4, 5, and 6 are new but the information required by these provisions was always required as part of any application for a home occupation permit in the past anyway, so the obligations are neither unexpected nor burdensome.

The process for acting on an IUP application for a home occupation will be the same as the process for any other IUP application found in section 305.030.

F. 305.150 – PROCESS FOR CONSIDERATION OF APPLICATION FOR HOME OCCUPATION

An application for an IUP for a home occupation will be acted upon in the same manner as any other IUP application. The applicable process is found in section 305.030. It is helpful, however, to include this section so the public knows that an application for an IUP for a home occupation will be referred to the Planning Commission for a public hearing and the creation of an administrative record.

G. 305.160 – REQUIREMENTS AND STANDARDS FOR HOME OCCUPATIONS

The list of requirements and standards for a home occupation in this section is identical to the list already found in 306.070, item 4. The only change was to include an introductory sentence indicating that a permit applicant had to comply with these requirements and to number the requirements rather than to use letters simply to make the format identical to that in other provisions. The requirements are all reasonable limitations on a home occupation that is not specifically allowed under the code. In most cases it is likely that these requirements will also be incorporated into the actual Interim Use Permit as conditions.

H. 305.170 – INSPECTION

This is another provision intended specifically for home occupations that is similar to the general provision in section 305.020, item 2, that the City may make an IUP conditional on the right to inspect the property periodically. However, it is included here to emphasize that the City does intend to maintain the right to inspect property on which a home occupation has been permitted through the issuance of an Interim Use Permit. Also, it is included here because it already exists in the present ordinance, section 306.070, item 6. The only change is to update the reference to the ordinance setting forth the requirements for home occupations.

I. REPEALER

The present ordinance – section 306.070, item 5 – addresses nonconforming home occupations. This provision provides that any person conducting a home occupation out of compliance with section 306.070 has 90 days to obtain a Conditional Use Permit. Since that 90 day period has long expired, there is no need to include this language. Any person who is presently conducting a home occupation without a permit (unless the occupation is allowed under section 305.110) is in violation of the city code and should immediately apply for an Interim Use Permit. If the home occupation is prohibited under section 305.120, the person should cease immediately with the occupation.

The existing section 306.070, item 5, also establishes that a CUP for a home occupation automatically terminates when the applicant no longer resides in the specific dwelling unit. Since a CUP “runs with the land” it is uncertain whether such a condition is enforceable. That is an important reason why a separate ordinance regarding Interim Use Permits is being adopted and this section is being repealed.

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

ORDINANCE 2011-06

AN ORDINANCE AMENDING CHAPTER 301 (ZONING CODE: GENERAL PROVISIONS) CHAPTER 306 (ZONING CODE: CONDITIONAL USE PERMITS) TO CLARIFY CONDITIONAL USE PERMIT PROVISIONS AND TO ADD A PROVISION ALLOWING FOR THE ISSUANCE OF INTERIM USE PERMITS AND ADOPTING NEW CHAPTER 305 (ZONING CODE: INTERIM USE PERMITS) TO ESTABLISH STANDARDS AND PROCEDURES FOR INTERIM USE PERMITS

WHEREAS, the City of Birchwood has adopted chapter 301 and chapter 306 to allow for the granting of conditional use permits in certain situations, and

WHEREAS, conditional use permits run with the land, and

WHEREAS, the Minnesota Legislature has provided in Minnesota Statutes section 462.3597 that municipalities may allow for the issuance of interim use permits that will terminate under certain conditions, and

WHEREAS, the City of Birchwood is desirous of allowing for the issuance of interim use permits.

NOW, THEREFORE, the City Council of the city of Birchwood Village ordains that chapter 301 and chapter 306 are hereby amended to read as follows and chapter 305 is adopted to read as follows:

301 ZONING CODE: GENERAL PROVISIONS

301.070. CONDITIONAL USES. Certain accessory uses permitted within the City have greater than usual chances to present safety hazards, impact on neighboring people and property, and nuisance situations. Because of these greater effects, the City requires these uses to be covered under Conditional Use Permits. Applications for Conditional Use Permits must comply with all provisions of Section 306.
CONDITIONAL USE PERMITS.

1. A Conditional Use Permit shall be required for the following projects:
 - a. Any land disturbance activity where the slope is toward a lake, pond, wetland, or watercourse leading to such waters, and the alteration is closer to such water than the structure setback requirement. See Note at end of Section 301.070.

- b. Any land disturbance activity where such work involves an area greater than four hundred (400) square feet and/or more than fifty (50) cubic yards in volume. See Note at end of Section 301.070.
- c. Any swimming pool with a capacity over three thousand (3000) gallons or with a depth of over three and one-half (3 ½) feet of water.
- d. Any tennis court.
- e. Any solar energy system for heating, cooling, electrical generation or other purposes.

~~f. Home-occupation.~~

NOTE: A separate Conditional Use Permit is not required for a land disturbance activity when a building permit has been granted. However, as part of the Building Permit Application, the applicant shall provide information required pursuant to Section 306.030 and shall follow all provisions of Section 302.050 IMPERVIOUS SURFACES and 302.055 LAND DISTURBANCE ACTIVITY STANDARDS.

301.090. INTERIM USES. An "interim use" is a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it. An interim use permit is not required if a Building Permit or a Conditional Use Permit or a Zoning Permit is issued for the use. An Interim Use Permit is required for a home occupation.

306 ZONING CODE: CONDITIONAL USE PERMITS

\ 306.070 HOME OCCUPATIONS. Section 306.070 is repealed in its entirety.

306.080 NOTIFICATION AND PROCEDURES FOR CONDITIONAL USE PERMITS

1. Notice of Conditional Use Permit application shall be mailed at least 10 days prior to the Planning Commission meeting to each owner of property within 200 feet of the property to which the Conditional Use Permit relates, and when applicable to the Department of Natural Resources. The City Clerk shall mail such notices. The City shall also give such notice as may be required by state statute.

10. The City shall make a decision on a Conditional Use Permit within the time limitation of Minnesota Statutes section 15.99.

306.090 REVOCATION

1. A violation of any condition set forth or required by the City Council in granting a Conditional Use Permit shall be a violation of this Code, and the City Council after Notification and Procedures per Section 306.090, may terminate the Conditional Use Permit.
2. A Conditional Use Permit shall become null and void one year after it was granted, unless made use of within the year, or such a longer period of time if prescribed by the Council at the time the permit is issued. A Conditional Use Permit for a Home Occupation shall become null and void if the Home Occupation is not carried out for any continuous interval of one year.

305 ZONING CODE: INTERIM USE PERMITS

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305.010. GENERALLY.

As provided in section 301.090 the City may issue an Interim Use Permit for temporary uses of property including certain home occupations in accordance with the procedures and requirements of this chapter 305.

305.020. PERMIT APPLICATION

Applicants for an Interim Use Permit shall submit an application with the following information:

1. An application form signed by the property owner(s) or authorized representative.
2. The required application fee.
3. A complete description of the use.
4. Schedule for commencement of the use.
5. Size of the facility accommodating the use.
6. Hours and dates of operation.
7. Anticipated employment.
8. Floor plan or site plan.

305.030. PROCESS FOR CONSIDERATION OF APPLICATION.

1. All applications for an Interim Use Permit shall be referred to the Planning Commission for consideration. The City Clerk shall mail notice of the Planning Commission meeting at which the matter will be considered to each owner of property within 200 feet of the property to which the Interim Use Permit relates, at least ten days before the meeting. The City shall also give such notice as may be required by state statute.

2. The applicant for the Interim Use Permit shall appear before the Planning Commission to present the application and answer questions. The Planning Commission may also hear from other interested persons and may receive information in writing.

3. The Planning Commission shall consider possible adverse effects of the proposed interim use and identify mitigative measures that may be taken to reduce adverse effects.

4. The Planning Commission shall make a recommendation to the Council on whether to issue the Interim Use Permit and any conditions that should be included if issuance of a permit is recommended.

5. The matter shall be placed on the agenda for a City Council meeting for the Council to make a final decision. The Council may accept, modify, or reject the recommendation of the Planning Commission.

6. The City shall make a decision on an Interim Use Permit within the time limitation of Minnesota Statutes section 15.99.

305.040. STANDARDS GENERALLY.

No Interim Use Permit shall be issued unless the City Council determines the following:

1. The proposed use will not adversely impact implementation of the City's Comprehensive Plan.
2. The proposed use will not be in conflict with any provisions of the City Code on an ongoing basis.
3. The proposed use will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare.
4. The date or event that will terminate the use has been identified with certainty.
5. The property on which the use is situated is currently in compliance with all applicable City Code standards, property maintenance standards and there are no nuisance characteristics associated with the property or its current use.
6. The applicant has paid the necessary fees established by the City Council for an Interim Use Permit.
7. There are no delinquent property taxes, special assessments, interest, or City utility fees dues upon the parcel of land to which the Interim Use Permit application relates.

305.050. PERMIT CONDITIONS

The City may include with any Interim Use Permit such conditions as the City deems reasonable and appropriate. These conditions may include any or all of the following:

1. Mitigative measures to reduce potential adverse effects.

2. Conditions authorizing City inspection of the premises.
3. The posting of a financial guarantee.
4. Requirements of any city code provision may be included as a condition in the permit.
5. Such other conditions as the City deems are reasonable and appropriate.

305.060. SUSPENSION OR REVOCATION

The City Council may suspend or revoke an Interim Use Permit upon the failure of the permittee, owner, operator, tenant or user to comply with the provisions of this Code, the laws of the State of Minnesota or any condition established at the time of approval of the Interim Use Permit. No suspension or revocation shall be effective without first giving notice to the permittee and providing the permittee with an opportunity to be heard.

305.070. TERMINATION.

An Interim Use Permit shall terminate on the happening of any of the following events, whichever comes first:

1. The date or event stated in the permit occurs.
2. Upon change in the City's zoning regulations the use is no longer permitted.
3. The permittee has not begun the use of the property as allowed by the permit within six months after issuance.
4. The IUP shall expire if the approved use is inactive for one year or longer.
5. Five years after the date of issuance if not terminated earlier.

305.100. HOME OCCUPATIONS. Because Birchwood Village is a residential community, this ordinance and the actions of the City to enforce it are intended to insure that all home occupations shall be unobtrusive to the residents of Birchwood Village. The City has established by ordinance certain home occupations that are allowed and certain home occupations that are prohibited. Home occupations that are neither allowed nor prohibited may be conducted upon the issuance of an Interim Use Permit. The requirements of sections 305.100 to 305.140 shall be construed to be in addition to any other provisions of chapter 305 that are applicable.

305.110. ALLOWED HOME OCCUPATIONS.

The following home occupations are permitted within the city limits of the City of Birchwood, provided the occupation is conducted by a resident of the home and there are not more than two patrons per visitation nor more than six visitations per day. :

1. Telecommuting
2. Home office
3. Art Studio that does not involve a foundry or welding
4. Dressmaking and Tailoring
5. Secretarial Services
6. Licensed family day care
7. Foster care
8. Catering
9. Instruction, including music lessons, of no more than two pupils at a time

305.120. PROHIBITED HOME OCCUPATIONS.

The following home occupations are not permitted within the city limit of the City of Birchwood:

1. Body shops
2. Machine shops
3. Welding
4. Flea markets
5. Escort businesses or any sexually oriented business
6. Headquarters or dispatch centers where persons come to the residence and are dispatched to other locations
7. Sale, lease, trade, transfer, repair, or manufacture of major appliances, internal combustion engines, motor vehicles, watercraft, illegal drugs or substances, firearms or ammunition, hazardous materials or explosives, including fireworks
8. Animal boarding kennels.

305.130. HOME OCCUPATIONS ALLOWED BY INTERIM USE PERMIT.

Any home occupation that is not an allowed home occupation under Section 305.020 or a prohibited home occupation under Section 305.021 shall be allowed to operate only after an Interim Use Permit is issued pursuant to this chapter.

305.140. APPLICATION FOR AN INTERIM USE PERMIT.

Applicants for an Interim Use Permit shall submit an application with the information specified in section 305.020 and the following information:

1. a site plan
2. a floor plan
3. a written narrative describing the home occupation and it's compliance or deviation from the code
4. a description of equipment and vehicles to be used for the occupation
5. a schedule for commencement and conduct of the home occupation, including days and hours of operation
6. conditions and limitations on the occupation that the applicant will comply with if the permit is issued
7. any other information requested by the City

305.150. PROCESS FOR CONSIDERATION OF APPLICATION FOR HOME OCCUPATION.

The City shall act on an application for an Interim Use Permit in accordance with the requirements in section 305.030.

305.160. REQUIREMENTS AND STANDARDS FOR HOME OCCUPATIONS.

No Interim Use Permit shall be granted for a home occupation unless the applicant will comply with the following:

1. The home occupation shall be conducted solely within the principal or accessory structures.
2. The nature of the home occupation shall be clearly secondary and incidental to the use of the building as a dwelling unit. No more than 20% of the gross floor area of the unit shall be dedicated to the home occupation.
3. No more than one person may be engaged in the business on the premises other than those who customarily reside on the premises.
4. Exterior displays or signs, exterior indication of the home occupation or variation from the residential character of the principal structure shall not be permitted.
5. No home occupation shall be noticeable from adjacent properties or right-of-way nor constitute a fire hazard to neighboring residences, adversely affect

neighboring property values, or constitute a nuisance or otherwise be detrimental to the neighbors because of traffic, noise, glare, odor, electrical interference, magnetic interference, radio and television interference, laser beams, vibration, dust and other nuisance or safety hazards or other factors that may affect neighbors.

6. No home occupations shall adversely affect government facilities and services, including roads, sanitary sewers, city water, storm drainage, garbage service, police service and fire service.

7. No home occupations shall adversely affect sensitive environmental features, including lakes, surface water, underground water supply and quality, wetlands, slopes, soils or factors as found relevant by the city staff or city council.

8. No home occupations shall involve the use of hazardous materials or activities.

9. Deliveries shall be by single rear axle straight trucks normally used by package delivery services in residential neighborhoods. No more than three delivery/pickup trips per day are allowed.

10. The home occupation shall not cause a noticeable increase in traffic congestion on the lot containing the home occupation or on the streets adjacent thereto as compared to that generated by a typical family in a dwelling. Commercial vehicles associated with the home occupation shall make no more than three trips to/from the lot per day.

11. No motor vehicle or trailer parking related to the home occupation shall be permitted on the street.

12. No more than one commercial vehicle associated with the home occupation may be parked on the lot outside a garage.

13. Commercial vehicles larger than one ton associated with the home occupation may not be parked or stored on the lot.

14. No exterior storage of equipment or materials associated the home occupation is permitted at any time.

15. A full time resident must conduct the business.

305.170 INSPECTION

1. Upon issuing a Conditional Use Permit for a home occupation, the City of Birchwood Village hereby reserves the right to inspect the premises in which the home occupation is being conducted to insure compliance with the provisions of this section or any conditions additionally imposed.

2. If City officials believe that any home occupation is being conducted out of compliance with any requirement of chapter 305, the City reserves the right to inspect or seek inspection of the premises in which the home occupation is being conducted and to bring action for compliance.

EXPLANATION OF PROPOSED AMENDMENTS TO CHAPTER 203

Chapter 203 of the Birchwood City Code is the chapter that adopts the State Building Code. The State Building Code was adopted in 1984 and Birchwood first adopted the State Building Code as a city ordinance sometime after that. The last amendments to the city ordinance were adopted by the City Council in 2004.

The reason for amending Chapter 203 at this time is to update the references to the State Building Code and to eliminate the provisions relating to fees since fees are addressed generally in chapter 701 and the amount of the fees is now established in a permit fee schedule adopted by the City Council from time to time by resolution.

The following explanation addresses each of the proposed amendments to chapter 203.

203.010. STATE BUILDING CODE ADOPTED.

The changes here recognize that the State has renumbered the statutes where the State Building Code is found. Those statutes are now Minnesota Statutes §§ 326B.01 to 326B.153. (Sections 326B.163 to 326B.191 apply to elevators and are not proposed for inclusion in the Birchwood ordinance.) Also, language is proposed to be added to this section to simply recognize that this chapter 203 is called the Birchwood Building Code.

Language is also proposed to be added to recognize that the Birchwood Building Code includes any optional chapters the City decided to adopt. Section 203.020 does include optional requirements relating to grading. Finally, while it is not a change in the present language, it is pointed out that the city ordinance provides that any changes adopted by the Commissioner of the Department of Administration to the State Building Code are automatically included in the Birchwood Code. This allows the city ordinance to change as the State requirements change without requiring the City Council to specifically amend the ordinance. The Commissioner cannot change the state requirements, however, without completing a state rulemaking process, which does require notice to the public and written explanation and justification of the changes.

203.020. BUILDING CODE OPTIONAL CHAPTERS.

The primary change here is to recognize that the optional requirements of the State Building Code that are being adopted are the requirements for Grading that are now found in Appendix J of the 2006 International Building Code. These grading requirements used to be found in Appendix K of the 2002 Supplement of the 2000 International Building Code and that reference was included in the city ordinance.

Another optional requirement relates to fire protection systems and is found in chapter 1306 of the rules of the Commissioner of the Department of Administration. These are not proposed for

adoption because they apply to larger buildings and to commercial structures, which are not found in Birchwood.

203.030. APPLICATION, ADMINISTRATION AND ENFORCEMENT. The proposed changes here simply strike language about a Building Official and a City Building Department. The City of White Bear Lake acts as Birchwood's building and planning agent and administers the Birchwood Building Code so any references to a city building official or a building department are unnecessary.

The present ordinance provides that the State Building Code shall be enforced within the incorporated limits of the city. That State Building Code, section 326B.121, does allow a city to enforce its building code in neighboring townships, but this provision has no application in a situation like Birchwood's.

203.040. PERMITS REQUIRED.

There are no changes proposed for this section.

203.050 PERMIT FEES.

The first paragraph of this provision simply states that the City of Birchwood has authority to impose fees for the consideration and issuance of building permits under the Birchwood Building Code. The language sets forth the statutory and rule authority for cities like Birchwood to impose fees. The citations have been updated to reflect the proper references to statute and rule. The fact that Birchwood charges fees for the issuance of building permits is not a change in existing practice nor is it unique to Birchwood; all governmental bodies have the authority and do charge fees for issuing building permits.

Presently there are eight (8) subsections in section 203.050. Most of them are proposed to be deleted. Discussed first below are the subsections that are proposed to be retained, which requires renumbering in some situations. Then the reasoning behind deleting those subsections that are proposed for repeal is discussed.

First, the rationale for the subsections that will be retained.

1. **PERMIT FEES.** The change proposed here is to indicate that the City Council has now decided to establish permit fees not in this ordinance but in a fee schedule promulgated by the Council from time to time by resolution. This fee schedule will not only show the building permit fees but will contain all other fees, such as dog licenses and conditional use permit applications as well.
2. **VALUATION.** This language is taken from the present subsection 4. It is proposed to be kept because it explains how the value of a building project will be determined. The value is important because in many instances the amount of the permit fee is

based on the value. The language is reworded slightly to eliminate any possible confusion over whether Birchwood has a separate building official besides the City of White Bear Lake.

3. FEE REFUND. This is the present subsection 8. It is renumbered as subsection 3. This provision is proposed to be kept because it provides more detail than the fee schedule promulgated by the City Council for granting refunds. Because these fees can be more substantial than other types of fees that are required, it is appropriate to allow a longer period of time than the normal 15 days to seek a refund. Also, the language has been modified slightly to eliminate the reference to a city building official and recognizes that the City Council will appoint a person who has the authority to approve a fee refund. Presently, that person would be the director of the City of White Bear Lake's building department, Ben Eggan.

The changes discussed above relate to those provisions that will continue to be in chapter 203. Several subsections are proposed to be deleted, however. Those are discussed below, under their present numbers in the existing ordinance.

2. PLAN REVIEW. This provision is proposed to be deleted because there no longer will be a separate fee for reviewing plans.

3. STATE SURCHARGE FEES. This provision is proposed to be deleted because it will now be included in the fee schedule adopted by the City Council by resolution. The obligation to pay a surcharge, however, will continue. This obligation is found in Minnesota Statutes § 326B.148 and the money goes to the state. The surcharge is equivalent to one-half mil of the fee, or \$5.00, whichever amount is greater.

5. MECHANICAL PERMIT FEES. This is existing subsection 5. It is proposed to be deleted because it is really more of a permit requirement than a permit fee. The fee for plumbing, heating, electrical, and fire suppression are set forth in the permit fee schedule that the Council adopts. The obligation to obtain a permit for such work is set forth in chapter 205.

6. INVESTIGATION FEE. This provision is no longer necessary since it will be included in the fee schedule or in chapter 701 relating to fees generally. The City Council does intend to continue the provision that the fees will double if work starts before the necessary permit or permits are issued.

7. ADDITIONAL CHARGES. This provision is presently untitled. It is proposed to be deleted for the same reason other provisions are proposed to be deleted – the requirement will be included in the fee schedule or in chapter 701. It is unnecessary to repeat it here.

203.060. SCHEDULE OF PERMIT FEES.

This is the section that sets forth the fees that are required when a permit is applied for. This section is no longer necessary because the fees will now be set forth in a fee schedule adopted by the City Council by resolution, so it is proposed to be repealed.

It can be mentioned here that the City Council is considering making the Birchwood fees identical to what the City of White Bear Lake charges so that it is easier for White Bear Lake to implement the Birchwood requirements. Not only does it makes sense to make Birchwood's fees consistent with the fee structure in White Bear Lake, but also, the present Birchwood ordinance does not even set forth fees for certain types of construction that require review and a permit and the new fee schedule will address that. Moreover, the fees charged by White Bear Lake are reasonable fees that cover the costs of administration.

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

ORDINANCE 2011-06

AN ORDINANCE AMENDING CHAPTER 203 (CITY BUILDING REGULATIONS) TO MAKE THE PROVISIONS CONSISTENT WITH THOSE OF THE CITY OF WHITE BEAR LAKE SINCE WHITE BEAR LAKE ADMINISTERS THE ZONING AND PERMITTING REQUIREMENTS OF BIRCHWOOD

WHEREAS, the City of Birchwood Village has adopted chapter 203 adopting the State Building Code and establishing requirements and fees for construction in the city; and

WHEREAS, the references to the State Building Code need to be updated; and

WHEREAS, since the City Council has elected to promulgate all permit fees by resolution adopting a permit fee schedule rather than set the permit fees in the ordinance

NOW, THEREFORE, the City Council of the City of Birchwood Village ordains that chapter 203 is hereby amended to read as follows:

203 CITY BUILDING REGULATIONS

-AN ORDINANCE ADOPTING THE MINNESOTA STATE BUILDING CODE PROVIDING FOR THE APPLICATION, ADMINISTRATION, AND ENFORCEMENT BY REGULATING THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERATION, REPAIR, MOVING, REMOVAL, DEMOLITION, CONVERSION, OCCUPANCY, AND MAINTENANCE OF ALL BUILDINGS AND/OR STRUCTURES WITHIN THE CITY OF BIRCHWOOD VILLAGE; PROVIDING FOR THE ISSUANCE OF PERMITS ~~AND COLLECTION OF FEES~~

203.010. STATE BUILDING CODE ADOPTED. The Minnesota State Building Code, as adopted by the Commissioner of Administration pursuant to Minnesota Statutes Sections 326B.01-16B.59 through 326B.16, 16B.75, including all optional chapters hereinafter specifically adopted by the City Council and including all of the amendments, rules and regulations established, adopted and published from time to time by the Minnesota Commissioner of Administration, through the Building Codes and Standards Division, is hereby adopted by reference and incorporated in this ordinance as if fully set out herein, and shall be known as the Birchwood Building Code.

203.020. BUILDING CODE OPTIONAL CHAPTERS. The following optional provisions identified in the most current edition of the State Building Code are hereby adopted and incorporated as part of the building code for Birchwood Village:

~~Chapter 1305, Appendix chapter K of the 2002 supplement of the 2000 International Building Code~~

Chapter 1305, Grading Appendix chapter J of the 2006 International Building Code.

203.030. APPLICATION, ADMINISTRATION AND ENFORCEMENT. The application, administration, and enforcement of the code shall be in accordance with Minnesota State Building Code. ~~The City Council shall appoint a Building Official who shall attend to all aspects of Building Code administration including enforcement. Additional members of a City Building Department shall be authorized by the City Council as needed. Organization of the City's Building Department shall be as amended by Minnesota Rules. The Minnesota State Birchwood Building Code shall be enforced within the incorporated limits of the City.~~

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203.040. PERMITS REQUIRED.

1. No person, firm or corporation shall erect, construct, enlarge, alter, repair, move, improve, convert, or demolish any building or structure in the City or cause the same to be done, without first obtaining from the city a separate building permit for each such building or structure.

2. It shall be unlawful for any person, partnership, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, convert, demolish, equip, use, occupy or maintain any building or structure in the City of Birchwood Village or cause the same to be done contrary to, or in violation of any of the provisions of this Code. Any person, partnership, firm or corporation violating any of the provisions of this Code shall be guilty of a misdemeanor, and shall be guilty of a separate offense for each and every day, or portion thereof, during which any violation of the provisions of this Code is committed, continued or permitted.

203.050 PERMIT FEES. ~~The city is authorized pursuant to issuance of permits and the collection of fees shall be as authorized in Minnesota Statutes, section 326B.121, -16B.62, Subdivision 1, and as per the Minnesota State Building Code, Minnesota Rules Chapter-part 1300.0160 regarding fees, to establish fees for the consideration and issuance of building permits under the Birchwood Building Code.~~

1. PERMIT FEES. ~~The City shall establish appropriate permit fees for the various activities conducted under the Birchwood Building Code by resolution and promulgate such fees in a fee schedule. Permit fees shall be assessed for work governed by this code in accordance with the fee Schedule set forth in Section 203.060.~~

2. VALUATION. ~~The building official shall utilize the Chart of Estimated Construction Cost as annually provided by the Minnesota Department of Administration State Building Codes and~~

Standards Division shall be utilized to compute building valuations for the purposes of establishing the appropriate permit fee. Permit valuation shall include total value of all construction work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment, and permanent systems. Permit fees for prefabricated structures shall be based on a valuation of on-site work only.

3. FEE REFUNDS. The City may authorize refunding of any paid fee that was erroneously paid or collected. The City may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. When plan review services have been provided, the plan review fee portion of the permit fee shall not be refunded. No portion of any fee paid shall be refunded except upon written application filed by the original applicant not later than 180 days after the date of fee payment. The City shall designate the person with authority to make the decision to refund a portion of the fee pursuant to this section.

~~2. PLAN REVIEW. Plan review fees shall be as required by the State of Minnesota. The plan review fee for dwellings, apartment houses, and their accessory structures shall be 50 percent of the building permit fee. Plan review fee for commercial building permits shall be 65 percent of the building permit fee. Submitted documents approved as similar plans under Chapter 1300.0160 Subp. 6 plan review fees shall not exceed 25% of the building permit fee.~~

~~3. STATE SURCHARGE FEES. All municipal permits issued for work under the code are subject to a surcharge fee. The fees are established by Minnesota Statutes, Section 16B.70. In addition to the permit fee required, the applicant shall pay a surcharge to be remitted to the Minnesota Department of Administration. State surcharge fees shall be computed in accordance with City Ordinance 203.050. 2.~~

~~4. VALUATION. The building official shall utilize the Chart of Estimated Construction Cost as annually provided by the Minnesota Department of Administration State Building Codes and Standards Division to compute building valuations for the purposes of establishing the City of Birchwood Village permit fee schedules. Permit valuation shall include total value of all construction work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment, and permanent systems. Permit fees for prefabricated structures shall be based on a valuation of on-site work only.~~

~~5. MECHANICAL PERMIT FEES. Mechanical permit procedures and fees are as follows: Mechanical permits shall include plumbing, heating, electrical, and fire suppression. It shall be unlawful for any person to perform work subject to the Building Code for which a permit is required without first obtaining a permit; such permits shall be issued by the City only to persons licensed by the City or by the State of Minnesota as required and registered as such with the City~~

or to persons making application to do any such work wholly within a residence owned and occupied by the applicant.

~~6. INVESTIGATION FEE.~~ Where work for which a permit is required is started or continued prior to obtaining said permit, the permit fee shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with existing codes or ordinances in the execution of the work nor from any other applicable penalties.

~~7.~~ An additional charge, not to exceed actual expenses incurred, may be required in such instances where repeated violations of the building codes and ordinances make necessary an excessive number of re-inspections in order to ensure compliance with the provisions by the applicant prior to the issuance of Certificate of Occupancy.

~~8. FEE REFUNDS.~~ The building official may authorize refunding of any paid fee that was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. When plan review services have been provided, the plan review fee portion of the permit fee shall not be refunded. The building official shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment.

~~203.060. SCHEDULE OF PERMIT FEES.~~ The applicant for a permit for building, plumbing, heating, electrical or fire suppression systems shall pay the following fees:

-

~~1. BUILDING PERMIT FEE SCHEDULE~~

TOTAL VALUATION	FEE	
\$1.00 to \$500.00	-\$29.50	-
-\$501.00 to \$2,000.00	-\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00 or fraction thereof, to and including \$2,000.00	
-\$2001.00 to \$25,000.00	-\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00	
-\$25,001.00 to \$50,000.00	-\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00	
-\$50,001.00 to \$100,000.00	-\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00 or fraction thereof, to and including	

	\$100,000.00.
-\$100,001.00 to \$500,000.00	-\$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00
-\$500,001.00 to \$1,000,000.00	-\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00
-\$1,000,001.00 and up	-\$5,608.75 for the first \$1,000,000.00 plus \$3.15 for each additional \$1,000.00 or fraction thereof.

~~Other Inspections and Fees:~~

~~Inspections outside of normal business hours \$47.00 per hour*~~
 (Minimum charge - two hours)

~~Re-inspection fees \$47.00 per hour*~~

~~Inspection for which no fee is specifically indicated
 (Minimum charge - one-half hour) \$47.00 per hour*~~

~~Additional plan review required by changes,
 additions or revisions to Plans
 (minimum charge - one-half hour) \$47.00 per hour*~~

~~Outside consultants for plan checking and
 inspections or both Actual costs**~~

~~*Or the total hourly cost to the city, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages, and fringe benefits of the employees involved.~~

~~**Actual cost includes administrative and overhead costs.~~

~~-~~

~~2. STATE SURCHARGE FEES~~

~~If the fee for the permit issued is fixed in amount the surcharge is equivalent to one-half mil (0.0005) of the fee or 50 cents, whichever amount is greater. For all other permits the surcharge is as follows:~~

VALUATION OF STRUCTURE, ADDITION OR ALTERATION	SURCHARGE COMPUTATION
-\$1,000,000 or less	-.0005 x valuation (minimum \$.50)
-\$1,000,000 to \$2,000,000	-\$500 + .0004 x (Value - \$1,000,000)
-\$2,000,000 to \$3,000,000	-\$900 + .0003 x (Value - \$2,000,000)
-\$3,000,000 to \$4,000,000	-\$1200 + .0002 x (Value - \$3,000,000)
-\$4,000,000 to \$5,000,000	-\$1400 + .0001 x (Value - \$4,000,000)
-Greater than \$5,000,000	-\$1500 + .0005 x (Value - \$5,000,000)

~~3. OTHER PERMIT FEES~~

~~Heating Permit ————— \$60.00~~

~~Plumbing Permit ————— \$60.00~~

~~“AMENDED BY ORDINANCE 2004-5; April 13, 2004.”~~

~~AMENDED BY ORDINANCE 2012- DATE~~

EXPLANATION OF PROPOSED AMENDMENTS TO CHAPTER 205

Chapter 205 of the Birchwood City Code sets forth a licensing requirement for persons (the term "person" includes individuals, firms, and corporations) who want to perform certain construction activities within the city limits. The Code requires that those persons who want to perform any of the identified construction activities either obtain a state license to do so, or if a state license is not required, a license from the City of Birchwood. There are thirteen separate activities listed in section 205.020 that require a state or city license, including plastering, masonry, roofing, and carpentry.

The City of White Bear Lake, which acts as the building official for Birchwood, has suggested that Birchwood either make the Birchwood requirements identical to those of White Bear Lake or eliminate the requirements for a city license for certain activities for which neither the state nor White Bear Lake requires a license. White Bear Lake does not require a separate city license for residential building contractors but it does require a separate city license for Commercial General Contractors. White Bear Lake also requires a city license for Heating and Ventilating Contractors and Tree Trimmers. White Bear Code section 1102.010.

The State of Minnesota does not require a state license for every single person who acts as a building contractor. For residential construction, only those persons or firms who engage in two or more of the construction activities identified in the statute are required to obtain a state license. Minnesota Statutes §§ 326B.801 to 326B.805. A person can do plastering or masonry work or carpentry, for example, without a state license, if that is the only work the person engages in. Electricians and plumbers, however, are required to obtain a license. Minnesota Statutes §§ 326B.31 to 326B.399 (electricians) and 326B.41 to 326.49 (plumbers).

It is appropriate to take a fresh look at whether Birchwood wants to require a city license for those persons who are doing work in the city for which neither the state nor the City of White Bear Lake requires a license. The amendments proposed here would eliminate all requirements to have a separate city license from the city of Birchwood. If a state license is required, then, of course, no person can engage in that kind of construction activity in Birchwood without that state license. If, on the other hand, a state license is not required to engage in certain construction activities, then the person can engage in that work without any license at all. In such a circumstance, a Birchwood resident can decide to hire an unlicensed person to do the work. A Birchwood resident may have any number of reasons to hire an unlicensed contractor, including a family relationship, or a previous relationship, or just to save money.

The city of White Bear Lake requires a city license to engage in commercial construction. Birchwood has no property zoned commercial so it is unnecessary to require a separate city license for that kind of work. White Bear Lake also requires a license for heating and ventilating and tree trimming. Birchwood has never required a city license for tree trimming. The present

code, section 205.020, subsection 1.f. does require a city license for heating, ventilation, and refrigeration (HVAC). The proposed amendments would eliminate the requirement to obtain a Birchwood license for heating, ventilation, and refrigeration, but if the contractor selected did work in White Bear Lake and perhaps other nearby cities, a license from White Bear Lake and these other cities would be held by that contractor. Again, a Birchwood homeowner may have any number of reasons to hire an unlicensed heating or air conditioning contractor but the homeowner would at least know that the contractor was unlicensed and did not do work in other cities where a city license was required.

The City of White Bear Lake began providing mechanical inspections for Birchwood in 2008. Most of the local contractors doing HVAC work in Birchwood were licensed by White Bear Lake. The past practice has been for Birchwood to recognize the White Bear licenses.

The White Bear Lake license fees for HVAC contractors are \$35.00 from January 1 through June 30th each year. After June 30, the fee drops to \$25.00. All licenses expire on December 31 and must be renewed the following year. Since 2008 White Bear Lake reports that it has licensed the number of contractors and collected the amount of fees shown in the list below.

2008	-	13 Licenses Issued	-	Total Fees = \$375 collected
2009	-	14 Licenses Issued	-	Total Fees = \$410 collected
2010	-	9 Licenses Issued	-	Total Fees = \$255 collected
2011	-	5 Licenses Issued	-	Total Fees = \$135 collected

Total fees collected for licensing since January of 2008 through November 29, 2011 = \$1175.00
Thus, there is not a significant amount of money involved if Birchwood were to eliminate the requirement to have a separate Birchwood license.

It is important to note that chapter 205 applies to individuals, firms, and corporations – the individuals and entities that are hired to do certain construction work. It does not apply to the obligation to obtain the necessary building permits authorizing the work and ensuring that it is completed in conformance with Birchwood zoning laws and building code. Even if a specific contractor is not required to obtain a city license or a state license, the homeowner undertaking the work must still obtain the necessary building permits. The City of White Bear Lake, as Birchwood's agent administering Birchwood's building code, will still review the permit application and determine whether the contractor is properly licensed by the state or does not need a license.

If what is intended in the ordinance is to eliminate any requirement for a separate Birchwood license and to rely entirely on state licensing requirements, it would probably be sufficient to simply provide in the ordinance that no person may do construction work in Birchwood without a state license if a state license is required. However, the proposed amendment identifies certain

construction activities that cannot be performed in Birchwood without a state license if such a license from the state is required. It is preferable to identify these specific construction activities because they cover the major home construction and remodeling activities that occur and focus homeowners' and contractors' attention on the importance of having a state license if one is required.

The following discussion describes the rationale for the specific changes proposed in chapter 205.

205.010. Purpose This provision is proposed to be amended slightly to simply eliminate the recognition that a city license is required for certain construction activities if a state license is not required. The Purpose of the ordinance – to ensure that construction work is properly done in the city – remains the same.

205.020. CONTRACTORS LICENSE.

1. State License or Certification. The language in this section is changed to eliminate any requirement to obtain a license from the city of Birchwood to engage in construction activities. Instead, the language says that if a license is required from the state, then no person can engage in that type of construction work without the appropriate license. A sentence is also included to recognize that the word "license" should be interpreted broadly, to include other forms of authorization from the state, such as certification. In some cases, there are different levels of license, such as a Master Electrician or a Journeyman electrician. Either designation will satisfy the requirement of the ordinance, provided, of course, that the contractor not engage in work outside the limits of the license.

What these changes would do is allow a resident to select a contractor to perform certain tasks at the resident's home even though the contractor was not licensed by the state if a state license were not required to engage in the activities the contractor was hired to do. For example, as explained below, under state law, a license is not required to do plastering work if that is the only kind of work the contractor engaged in. A resident could hire an unlicensed plasterer if the resident wanted to do that. Indeed, White Bear Lake would not require a license to do plastering work either.

(a) Residential building. The first category of work listed in the proposed ordinance is "residential building." A "residential building contractor" is defined in Minnesota Statutes § 326B.802, subd. 11 as " a person in the business of building residential real estate, or of contracting or offering to contract with an owner to build residential real estate, by providing two or more special skills as defined in this section. A residential building contractor may also contract or offer to contract with an owner to improve existing residential real estate."

The statute refers to providing two or more special skills. The term “special skills” is defined in section 326B.802, subd. 15 to include the following: excavation, masonry and concrete, carpentry, interior finishing, exterior finishing, drywall and plaster, residential roofing, and general installation specialties including pools, garage doors, and fireplaces.

The mechanism established by state law is that a contractor does not need to obtain a state license for residential building unless the contractor offers two or more special skills. An individual, firm, or corporation engaging in only one of these special skills is not required to obtain a state license except for roofing.

When a license from the state is required to engage in certain construction activities, it is the Commissioner of the Department of Labor and Industry who issues the license. Minnesota Statutes § 326B.805, subd. 1.

(b) Residential remodeling. The term “residential remodeling” is defined in section 326B.802, subd. 12 as “a person in the business of contracting or offering to contract with an owner to improve existing residential real estate by providing two or more special skills as defined in this section.” Again, the person must engage in two or more of the special skills identified in the statute. A license is not required from the state to engage just in carpentry, or only in plastering, for example.

A person who remodels homes and constructs new homes is not required to hold two licenses. Holding a license as a “residential building contractor” is sufficient to allow the person to engage in home remodeling as well.

(c) Residential roofing. Roofing of homes is the only single skill that requires a license. A roofer must be licensed as a residential roofer, a residential remodeler, or a residential building contractor. Minnesota Statutes § 326B.805, subd. 1.

(d) Electrical work. Electricians must be licensed. Minnesota Statutes § 326B.33.

(e) Plumbing work. Plumbers must be licensed. Minnesota Statutes § 326B.46. That statute does not require a license to do plumbing work at one’s own residence unless a local ordinance prohibits it. The proposed amendments here would not prohibit it; nor does the existing code provision prohibit it.

(f) Fire suppression. The existing White Bear Lake code recognizes that a state license is required to perform this kind of work, so a similar provision is included here.

(g) House moving. The existing White Bear Lake code recognizes that a state license is required to perform this kind of work, so a similar provision is included here.

(h) Sewer or water installation. The existing White Bear Lake code recognizes that a state license is required to perform this kind of work, so a similar provision is included here. Although the requirements for licensing plumbers would also require a license to install sewer

and water, it is helpful to list it separately so there is no doubt that such work must be done by a state-certified person if such state certification is required.

2. Building Permit. This language is included to emphasize that the licensing requirements of part 1 are independent from the obligation to obtain all necessary building permits and that an important consideration in reviewing a building permit application is to ensure that the contractor either doesn't need a state license or is properly licensed by the state.

205.030 APPLICATION AND RENEWAL. This section is proposed to be repealed. Since the proposed amendments would eliminate any requirement to obtain a city license, there is no need to have a section establishing requirements for applying for a city license.

205.040. REVOCATION OR REFUSAL TO RENEW LICENSE. This section is proposed to be repealed. Again, since there will be no city licenses required or issued if the amendments are promulgated, there is no need for language regarding revocation of a license or refusal to issue one.

205.050. EXCEPTIONS FOR HOMEOWNERS. The title of this section is changed to recognize that homeowners are not required to be licensed to do work on their own homes or property. However, they do have to obtain all necessary building permits and perform the construction in accordance with code requirements.

The present language in this section has a part 2 that applies to manufacturers. It is unclear exactly what this provision is intended to cover and it is proposed to be eliminated. Since the only provision left applies to homeowners, it is appropriate to change the title.

205.060 LIABILITY. The concept here remains the same – that the City of Birchwood shall not be liable for any damages incurred by a homeowner caused by a contractor – but the language is modified since the City of Birchwood will no longer issue any licenses to persons to engage in construction work in the city.

205.070. PENALTIES. No changes are proposed for this section. Even though the City of Birchwood would no longer issue any city licenses to contractors, a person could still violate the ordinance by engaging in certain construction activities that required a state license, which the person did not hold. This provision, while still included, is really unnecessary since new chapter 619 sets forth the penalties for any violation of the city code.

205.080. SEPARABILITY. No changes are proposed for this section.

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

Ordinance No. 2011- ____

AN ORDINANCE AMENDING CHAPTER 205 (CONTRACTOR LICENSES AND BONDING) TO UPDATE THE REQUIREMENTS AND MAKE THE PROVISIONS CONSISTENT WITH THOSE OF THE CITY OF WHITE BEAR LAKE SINCE WHITE BEAR LAKE ADMINISTERS THE ZONING AND PERMITTING REQUIREMENTS OF BIRCHWOOD

WHEREAS, the City of Birchwood Village has adopted chapter 205 establishing licensing requirements for persons who engage in construction work in the city; and

WHEREAS, the City of White Bear Lake has for several years administered the building and licensing requirements of the City of Birchwood Village; and

WHEREAS, the state of Minnesota has licensing requirements for persons who engage in certain construction activities; and

WHEREAS, the City of Birchwood Village has no commercial facilities and no areas zoned commercial within the city limits and does not need local licensing requirements for commercial contractors; and

WHEREAS, the City of Birchwood Village has determined that it is not necessary to require a city license for contractors who are not required to obtain a state license.

NOW, THEREFORE, the City Council of the City of Birchwood Village ordains that chapter 203 is hereby amended to read as follows:

203 CITY BUILDING REGULATIONS

205.010. PURPOSE. That it is deemed in the interest of the public and residents of the City of Birchwood Village that the work involved in building, altering, repairing, and constructing buildings or structures, and installing major appliances and service facilities including all carpentry work, landscaping, and utility work, be done only by individuals, firms, and corporations that have been properly licensed by the State of Minnesota unless a license from the state is not required.

205.020. CONTRACTORS LICENSE.

Item 1 is repealed and replaced with the following.

1. State License. No individual, firm, or corporation that is required to obtain a license from the State of Minnesota to engage in the following activities shall conduct such activities in the City of Birchwood Village without such a license from the State. The term license shall include license, certification, or other authorization designated by the State.

- (a) Residential building
- (b) Residential remodeling
- (c) Residential roofing
- (d) Electrical work
- (e) Plumbing work
- (f) Fire suppression
- (g) House moving
- (h) Sewer or water installation

2. Building Permit. No building permit of any kind shall be issued to any individual, firm, or corporation ~~unless they hold a valid contractor's license~~ required to hold a state license unless the individual, firm, or corporation holds such a license under this ordinance except as hereinafter noted.

Formatted: Underline

~~205.030. APPLICATION AND RENEWAL.~~

~~1. Application for a contractor's license shall be made to the City Clerk and such contractor's license shall be approved upon proof of applicant's qualifications thereon.~~

~~2. No application for a contractor's license shall be accepted by the City Clerk unless:~~

~~a. The applicant files proof of public liability insurance in the limits of \$100,000.00 per person and \$300,000.00 per accident for bodily injury and \$25,000.00 for property damage, and a certificate of worker's compensation insurance as required by law and;~~

~~b. The applicant signs a statement agreeing to be strictly liable to any person injured by any work done by itself or any of its subcontractors which is defective or in violation of any applicable code or ordinance, and;~~

~~e. The applicant submits an application fee for said license to be set by the City Council.~~

~~3. An existing license shall be renewable annually on or before January 1 of each year upon payment of a renewal fee as set by the City Council.~~

~~205.040. REVOCATION OR REFUSAL TO RENEW LICENSE.~~

~~1. No contractor's license shall be revoked or refused except for cause shown, which shall include but not be limited to:~~

~~a. Work of any kind done in violation of any applicable code or ordinance by the licensee or any of its subcontractors, or~~

~~b. Refusal on the part of a licensee to correct any defective work performed by such licensee or any of its subcontractors, or~~

~~c. Refusal on the part of a licensee to pay for any damages incurred by any person as a result of defective work performed by such licensee or any of its subcontractors, or~~

~~d. Any other act or omission of the licensee or any of its subcontractors which is detrimental to the health, safety, or morals of the citizens of the City of Birchwood Village.~~

~~2. Before any license issued under this ordinance is revoked or refused renewal, the licensee shall be given a public hearing before the City Council to show cause why such license should not be revoked or refused renewal. Notice of the time, place and purpose of said hearing shall be given in writing to the licensee, mailed to the licensee's address as listed on its application for license or license renewal form. Notice shall be given at least ten (10) days before said hearing.~~

~~3. No contractor's license shall be revoked or refused renewal under this provision except by majority vote of the City Council.~~

205.050. EXCEPTIONS FOR HOMEOWNERS.

~~1. Individual home owners shall not be required to obtain a contractor's license for work done by themselves upon or in connection with their own property as long as all applicable codes and ordinances are met and proper inspections obtained and proper permits acquired.~~

~~2. Manufacturers shall not be required to obtain permits for work incorporated within equipment as a part of manufacturing except as may be provided by other ordinances.~~

205.060. LIABILITY. This ordinance shall not be construed to affect the responsibility or liability of any party owning, operating, conducting, or installing the above described work for damages to persons or property caused by any defect therein nor shall the City of Birchwood Village be held as assuming any liability by reason of the granting of licenses to persons, firms, or corporations engaged in such work. liable for any such damages caused by any person licensed or unlicensed.

205.070. PENALTIES. Any person, firm, or corporation who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor.

205.080. SEPARABILITY. If any portion of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases might be declared unconstitutional.

EXPLANATION OF COMPLAINTS ORDINANCE

CHAPTER 618

I. INTRODUCTION

Presently section 615.040 (entitled ENFORCEMENT) establishes certain procedures for responding to complaints about alleged violations of chapter 615. Chapter 615 (entitled EXTERIOR STORAGE) places restrictions on what may be stored outdoors.

New chapter 618 is intended to replace 615.040 and to update the procedures for responding to complaints. In addition, a new chapter 619 is being proposed to provide generally for enforcement of city code requirements. Chapter 619 establishes certain remedies available to the City when violations of the code occur; these remedies are available whether or not a complaint has been filed with the City.

II. Section 618.010 - GENERALLY

The language in this section is taken from the Note at the beginning of present section 615.040. It simply recognizes that it is in the best interests of the City and its residents to resolve alleged code violations amicably between neighbors and without City involvement. The language is written broadly so it applies to all code violations, not just exterior storage requirements.

III. Section 618.020 - COMPLAINT

This section provides that any person may file a complaint with the City regarding an alleged code violation. The City will provide a form for a complainant to use in filing a complaint. Because chapter 618 applies to all code violations, not just exterior storage, the complainant must identify the specific code provision that has allegedly been violated. Because it is possible that the violation occurred on public property or on property not owned by the alleged violator, the complainant must also identify the property where the violation occurred or is occurring.

The proposed language recognizes that the City need not accept an anonymous complaint. The staff will decide whether an anonymous complaint warrants acceptance and follow-up.

The Minnesota Data Practices Act, Minnesota Statutes chapter 13, provides in section 13.44 that the name of the person who files a complaint regarding the use of real property shall be classified as confidential and not available to the public or to the owner of the real property. A sentence is included in the proposed ordinance stating that the City will maintain the confidentiality of complainants when required to do so under that statute. It should be mentioned that Minnesota Statutes § 13.44 does not apply when the complaint does not involve real property. Because chapter 618 applies to all code violations, some alleged violations may involve conduct and not real property. A firearm violation under chapter 609 would be an example.

IV. Section 618.030 - INVESTIGATION

This section establishes procedures to be followed after a complaint is filed. The City staff will conduct an investigation of the complaint and report to the City Council. The staff has discretion regarding how extensive an investigation to conduct. It may involve simply contacting the person who allegedly engaged in the unlawful conduct. Hopefully, most complaints will result in an amicable resolution of the situation and there will be no action for the Council to take.

Once the staff completes its investigation, it will file a written summary with the City Council. This written summary will be a public document, with confidential names and other information redacted if required by law.

V. Section 618.040 – NOTICE OF VIOLATION

In those cases where a situation cannot be resolved at the staff level, the Council has the authority to take action. While the City staff conducts the investigation, it is only the Council that can decide to take action. If the City Council determines that a violation exists, the Council will direct that the violator be sent a Notice of Violation. This is essentially a letter identifying the violation that has been found and directing the alleged violator to comply with the ordinance that the Council determined has been violated within a specified timeframe. The Notice may specify certain actions the Council expects the alleged violator to take.

In the more egregious or serious situations, the City Council could decide to take enforcement action immediately, without going through the steps outlined in chapter 618, and seek an injunction or file criminal charges. See sections 619.010 and 619.020 and 619.040.

VI. Section 618.050 – PUBLIC HEARING

This section provides that the alleged violator who gets the Notice of Violation can ask for a public hearing. In some cases, an alleged violator could ask for the hearing before the Notice of Violation was even issued. The person must request the hearing before the expiration date specified in the Notice of Violation. The hearing must be held within 60 days of the request. The hearing will be conducted by the Planning Commission. The alleged violator must be given notice of the time and date of the public hearing. The language doesn't specify the length of time the alleged violator must have between receipt of notice and the hearing, but the alleged violator must have an opportunity to prepare for the hearing.

The hearing can be as formal as the situation demands. In most cases it will likely involve the staff and the alleged violator explaining their sides of the situation. The complainant may or may not appear before the Planning Commission. Reports and other written documentation might be provided to the Planning Commission.

Once the hearing is over, the Planning Commission shall prepare a written report with its findings and make a recommendation to the City Council on what to do.

VII. Section 618.060 – ABATEMENT

This section provides that the City Council has options available to it to abate an alleged violation, whether or not a hearing has been held by the Planning Commission. One specific option is to actually abate the violation itself. Whether or not the City can go on private property and abate a specific violation will have to be determined in consultation with the City's attorneys at the time of the proposed action, but if abatement is appropriate and lawful, that is one tool available to the City. Other options including issuing an order to undertake specific actions to abate the situation or going to court for judicial remedies.

VIII. Section 618.070 – COSTS OF ABATEMENT BILLED TO PROPERTY OWNER

This section provides that if the City is required to go in and abate a particular situation, the City will look to the alleged violator to reimburse the City for the costs it incurred. The City will send an invoice to the responsible person. Oftentimes the responsible person will be the property owner but the violator does not necessarily have to be a property owner. Perhaps a person who littered one of the public beaches could be held responsible for costs in cleaning up the beach. As with the initial decision to abate a situation, the City will consult with its legal advisers in determining its authority to impose these costs on another person.

IX. Section 618.080 – CERTIFICATION ON PROPERTY TAXES

In those cases where the violator is a property owner, and the person fails to pay an invoice for abatement costs, the City will certify its expenses to the county auditor for collection in the same manner as special assessments and property taxes are collected. This language is taken from the existing language in section 615.040, Step 3.

X. Section 615.040 – ENFORCEMENT

The new chapter 618 takes the place of the provisions in section 615.040 so 615.040 should be repealed to avoid any confusion or inconsistency.

618. COMPLAINTS

618.010. GENERALLY. It is in the best interest of all residents of the City to try to resolve all problems regarding nuisances and other violations of the city code by polite personal contact between neighbors. It is recognized that such personal contact may not satisfactorily correct a particular situation or there may be reasons that a resident may not desire to use that approach. If a resident determines that polite personal contact will not resolve the problem, the following steps are to be followed:

618.020. COMPLAINT. Any person may file a complaint with the City on a form provided by the City. The complaint shall identify the specific ordinance provision that is allegedly being violated and the property at which the alleged violation is occurring. Anonymous complaints may be accepted at the discretion of City staff. The name of the complainant who complains about the use of real property will be classified as confidential data at all times pursuant to the provisions of Minnesota Statutes section 13.44.

618.030. INVESTIGATION. Upon receipt of a written complaint, City staff shall conduct an investigation of the complaint to determine if a violation exists. City staff shall then summarize the results of the investigation in writing and provide copies of the summary to the City Council. The staff report shall be a public document but no confidential or non-public data shall be disclosed.

618.040. NOTICE OF VIOLATION. Upon determination by the City Council that a violation exists, the City shall send a "Notice of Violation" to the alleged violator. Said notice shall direct the alleged violator to comply with the ordinance provision or provisions that are being violated within a specific period of time and may specify certain actions to be undertaken.

618.050. PUBLIC HEARING. Within the specified timeframe, the alleged violator may file a written request with the City that the Planning Commission hold a hearing on the matter. The alleged violator shall describe in the request the reasons why no violation has occurred or why no further action should be taken by the City. Upon receipt of a hearing request, the Planning Commission shall conduct the hearing within sixty days of receipt, after giving proper notice of the hearing. Unless directed by the City Council, the hearing held by the Planning Commission shall be open to the public. Upon completion of the hearing, the Planning Commission shall file a written report with the City Council. The report shall contain the findings of the Commission and the Commission's recommendation.

618.060. ABATEMENT. Upon receipt of the report from the Planning Commission, or if the alleged violator fails to cease the violation and also fails to ask for a public hearing within the specified time, the City may take appropriate action to address the situation, including directing the alleged violator to take certain action or, if appropriate, taking action itself to remedy the violation, or pursuing any other enforcement action available to the City.

618.070. COSTS OF ABATEMENT BILLED TO PROPERTY OWNER. After completion of the abatement action, the City shall send an invoice for the cost of the abatement to the responsible person for payment.

606.080. CERTIFICATION ON PROPERTY TAXES. If an invoice for payment of abatement costs is not paid on or before September 1 of any given year, and the violator is a property owner in the City of Birchwood, the City may extend such sum owed as a special tax against the property upon which the violation occurred and to certify the same to the County Auditor for collection in the same manner as taxes and special assessments are certified and collected, as otherwise allowed by law.

EXPLANATION OF PENALTIES AND ENFORCEMENT ORDINANCE

CHAPTER 619

I. INTRODUCTION

Scattered throughout the city code are provisions describing the enforcement options and penalties available when the city code is violated. See sections 607.910, 610.060, 614.080, and 615.040, for example.

Generally, the City has the authority to go to court and seek criminal misdemeanor penalties on a violator and to seek civil judicial remedies such as an injunction. This new chapter 619 is designed to put all these penalty and enforcement provisions in one place and to clarify that regardless of the code provision that is being violated, these penalties and remedies are available to the City.

II. Section 619.010 – MISDEMEANOR

Violation of the Birchwood City Code is a misdemeanor. Misdemeanors are punishable by up to 90 days in jail and a \$1000 fine. Minnesota Statutes §§ 609.03 and 609.033. If the state were to provide in statute that a particular crime was more serious than a misdemeanor, the person could be charged with the more serious offense.

III. Section 619.020 – INJUNCTION

This section is a recognition that the City of Birchwood could elect to go to court to seek a court order enjoining certain conduct that violates the city code. The City, of course, would have to prove that it was entitled to the injunction, either a temporary one or a permanent one, under applicable law in a court of law.

IV. Section 619.030 – CITY INVESTIGATION

The City does not need to wait for a complaint to be filed under chapter 618 to decide to conduct an investigation into an alleged violation. A matter could come to the attention of the city staff or Council without a complainant first coming forward. The Council could decide to ask the staff or the Parks Committee or the Planning Commission to conduct an investigation on its own initiative.

The Council cannot take any administrative action, such as issuing a Notice of Violation or an abatement order, without first providing the alleged violator with an opportunity to be heard. The person could elect to request a hearing before the Planning Commission under section 618.050.

V. Section 619.040 – CITY OPTIONS

The fact that the City cannot take administrative action without first notifying the person and providing an opportunity for hearing does not mean the City could not elect to go directly to court. In more serious situations, the City could decide to go directly to court, and that is what this section makes clear.

VI. Section 619.050 - COLLECTION

This section is similar to section 618.080 in intent. It makes clear that if a person owes the City money relating to an enforcement action, the City may exercise any available remedies to collect the money owed. If the person is a property owner in the city, the City may certify the amount owed to the County Auditor for collection in the same manner as property taxes and special assessments.

619. PENALTIES AND ENFORCEMENT

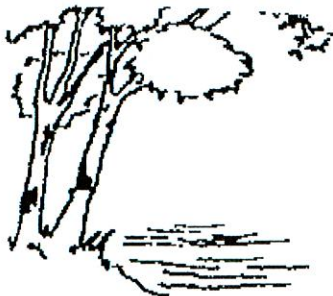
619.010. MISDEMEANOR. Any person who violates any provision of the City of Birchwood Code shall be guilty of a misdemeanor, unless state law provides for a different criminal penalty.

619.020. INJUNCTION. The City of Birchwood may seek to enjoin any conduct that is in violation of the City of Birchwood Code.

619.030. CITY INVESTIGATION. Whether or not a complaint has been filed under chapter 618, the City Council may elect to conduct an investigation into any alleged violation of the City Code. The Council may ask the Planning Commission or the Parks and Natural Resources Committee or other city employee to investigate an alleged violation and report back to the Council. After investigation, the Council may ask the alleged violator to implement certain actions or to refrain from certain conduct. The Council shall not take any action without providing the alleged violator notice of the matter and providing the person an opportunity to be heard before the Council. The alleged violator may request that the City hold a public hearing on the matter pursuant to section 618.050 of the Code.

619.040. CITY OPTIONS. The City may at any time elect to commence civil or criminal action against a person who is alleged to have violated any provision of the City Code, regardless of whether an investigation has been conducted or a hearing has been requested and held.

619.050. COLLECTION. The City may, after obtaining a court order directing the violator to pay a fine, fees, costs, disbursements, attorneys fees or any other monies to the City, seek to recover such monies through any method available to the City. If the violator is a property owner in the City of Birchwood, the City may extend such sum owed as a special tax against the property upon which the violation occurred and to certify the same to the County Auditor for collection in the same manner as taxes and special assessments are certified and collected, as otherwise allowed by law.



CITY OF BIRCHWOOD VILLAGE
207 Birchwood Avenue
Birchwood Village, MN 55110
651-426-3403 tel
651-426-7747 fax
birchwoodvillage@comcast.net

MEMORANDUM

Date: March 7, 2012
To: Mayor and Council
From: Dale Powers, City Clerk-Coordinator
CC: Cindie Reiter, City Treasurer
Re: Little Canada Utility Bill and Newsletter Billing

=====

The City of Little Canada (LC) has requested that the City reconsider its contract for utility and newsletter billing. Specifically, LC is requesting (a) an increase in its utility billing fee from \$3.65 per account to \$5.20 per account; (b) to terminate mailing out of the UBs and printing and mailing of the City's quarterly newsletter and (c) to have the City reimburse LC for deficits incurred by LC over the last two years on UB and newsletter services.

Staff met with LC City Administrator Joel Hanson and Accounting Clerk Jessica Jagoe on Wednesday, February 22, at LC City Hall to go over their review of the MOU and their costs of providing services to Birchwood. Hanson and Jagoe indicated that LC was losing money on providing UB and newsletter services to the City, which is creating a fiscal and political issue in LC.

This meeting was basically for exploratory purposes, on both ends. LC wanted to know whether Birchwood was open to adjustments to the per account rate so LC could recover its costs. Staff wanted to know whether LC was still interested in providing UB and newsletter services to Birchwood. The discussion resulted in LC desiring to continue providing UB services to Birchwood, and not desiring to continue providing newsletter printing, folding, and stuffing services to the City. For purposes of this memo, staff will first discuss the UB issue. After that matter has been fully developed, staff will then turn to the newsletter issue.

BACKGROUND

Since April 2010, LC has been Birchwood's provider of utility billing services. As a basic service, LC receives quarterly meter readings of Birchwood's 384 water accounts from S L Serco (provider of meter reading services for both cities), inputs the data into a computerized billing system that incorporates Birchwood's water rates, and prepares the billing statement. After the bills are sent out, LC receives the payments, deposits the payments in Birchwood's account at U S Bank, and provide General Ledger documentation to Birchwood.

Per the provisions of the attached copy of the Memorandum of Understanding (MOU) between LC and Birchwood, it appears that Birchwood is the default responsible party for mailing out the UBs. There is a clause under the fifth arrow of the MOU that references LC mailing out the UBs, but that only addresses when the UBs will be mailed. Under "Compensation and Terms of Payment", LC charges Birchwood \$3.65 per account to process the billing, deliver the bills for distribution and provide the accounting reports to record the UB transactions into the Birchwood general ledger. This clause further states that "Birchwood will retain their meter-reading vendor and continue to internally process the bill mailing. If Birchwood chooses to have LC arrange for these services, the cost for these services would be negotiated [between the two cities]." It is the understanding of staff from talking to Shelly Rueckert, former LC Finance Director, that LC's costs for mailing out Birchwood's UBs was passed along to Birchwood, which was billed accordingly.

In addition to processing Birchwood's UBs, LC also has been printing, folding, and stuffing Birchwood's quarterly newsletter with the UBs. There is no reference to this task in the MOU; it appears that LC has been doing this task as an additional service to Birchwood and billing us \$100.00 per quarter for doing so. It is my understanding that the \$100.00 fee comes out of the General Fund and not from the Water Fund.

It has come to the attention of staff that initially, the UBs were delivered to Birchwood already inserted into envelopes. Birchwood volunteers then folded and inserted the newsletter into these envelopes. LC then picked up the envelopes for subsequent mailing. The current practice has been to e-mail the completed newsletter to LC for copying, folding, and inserting into the UB envelopes.

Birchwood's primary contact with LC until recently has been Finance Director Shelly Rueckert. With Shelly moving on to be the Finance Director for the City of Saint Anthony Village, LC thought it was appropriate to review the MOU to see if it could use some adjusting; there have been no changes to the rates LC charges Birchwood for these services.

On February 24th, staff received a proposal from LC City Administrator Hanson on amendments to the MOU as they relate to the "per account" charge to Birchwood. In addition, LC indicated that it has lost \$5,433.01 on providing UB and newsletter services to Birchwood and, wanting to recover those costs, proposes a "recovery plan" for the Council's review.

The proposal first details the costs for each component part of the service, as follows:

Utility Billing Services:

Contract Amount - $\$3.65 * 384 \text{ accts} =$ $\$1,401.60/ \text{Qtr}$ $\$5,606.40/ \text{Yr}$

Little Canada's Cost of Service:

Enter Readings – Staff Time 2 Hours

$$(\$38.82 * 2 = \$77.64)$$

Preparation of Bills – Staff Time 3 hours

*Includes entering of readings and providing Birchwood a list of rereads, possible remote repairs and vacant properties

$$(\$38.82 * 3 = \$116.46)$$

Printing Costs (384 bills * .0302/copy = \$11.60)

Receipting/Deposits – 53 batches in 2011 = 13.25 batches per qtr – Staff Time = 1.25 hour per batch

$$(16.5 * 35.95 = \$595.33)$$

$$(\text{Mileage } 4 \text{ miles} * \$0.555 \text{ per mile} * 13.25 = \$29.41)$$

Bank Deposits – 13.25 batches per quarter - (estimate 15 minutes per trip, plus mileage reimbursement)

$$(13.25 \text{ trips} * .25 \text{ hrs} = 3.3 \text{ hrs} * \$35.95 = \$118.63)$$

Journal Entries – Finance Director - 5 minutes per batch

$$(\$53.96 * .0833 * 13.25 = \$59.56)$$

Invoicing services – 4 times a year – Lisa 1 hour total per year/ 15 minutes per qtr

$$(.25 \text{ hour} * \$35.95 = \$8.99)$$

Ordering/Receipt of Supplies – Lisa – once per year – 30 minutes

$$(.125\% \text{ of an hour} - \$4.49)$$

*Includes paper, return envelopes, and mailing envelopes

Customer Service Time, Re-addressing Returned Bills, Delinquent Certifications – estimate 10 hours per qtr

$$(10 \text{ hours} * \$38.82 = \$388.20)$$

Contract Oversight

City Administrator Oversight (1 hour * \$90.16 = \$90.16)

Finance Director Oversight (3 hours * \$53.96 = \$161.88)

Total Costs	\$1,662.35/Qtr	\$6,649.40/Yr
Difference:	-\$260.75/Qtr	<u>-\$1,043.00/Yr</u>

On the "per account" charge, the LC proposal states that "Little Canada's costs to provide Utility Billing Services equal \$6,649.40 per year or \$1,662.35 per quarter. The quarterly amount equates to a billing charge per customer of \$4.33 per quarter. Little Canada believes a 20% markup is reasonable to cover unknown costs. That yields a quarterly charge per account of \$5.20 versus the current rate of \$3.65. It should also be noted that the current rate of \$3.65 was established in 2010 and has not received any inflationary adjustments." The specific proposal calls for the \$5.20 per account charge to be effective with the 1st quarter 2012 billing.

STAFF RECOMMENDATIONS

It is staff's professional opinion that a 20% mark-up for contingencies is excessive. Staff understands and appreciates that LC needs to recover its costs, for financial and political reasons. Hanson stated in the exhibit that LC "need[s] to be accountable to our citizens and ensure we are not providing services to others that don't fully reimburse our costs." Staff would add that Birchwood equally needs to be accountable to its citizens and ensure that it is not paying more for said services that is required to reimburse the vendor for its costs.

On the other hand, staff believes it is reasonable for an annual review of the costs incurred by LC for providing utility billing services to Birchwood, and make adjustments to the "per account" charge if warranted.

If the Council is comfortable with this number, staff recommends the City amend the MOU to allow for a "per account" rate of \$4.50 for the 4 billings in 2012, and to either (a) to allow for adjustments to the "per account" rate upon demonstration by LC that its costs to provide the service have increased, or (b) negotiate an increase based on a pre-set index (e. g. COLA) or a set percentage. *Staff believes that the recommended 4% "markup" recognizes that there may be some additional costs not readily identified by LC and provides an avenue for immediate recovery of those costs, and that the provisions for either a indexed increase or a adjustment based on demonstration of costs on an annual basis allows LC the opportunity to ensure that its citizens are not subsidizing Birchwood's utility billing, while concurrently ensuring that Birchwood residents are not paying an unreasonably high charge for the basic UB service provided by LC. Staff reiterate that this language needs to be incorporated into the revised MOU, with increases not automatically approved but requiring approval by each City.*

Staff also believes that some thought should be given to adding the "per quarter" charge to each UB , to be portrayed as "administration charge", to better inform the public of these charges. *Staff recommends forwarding this recommendation to the Finance Committee, which is currently reviewing the utility fees and will be making its recommendations on new fees in May.*

UB FOLDING, STUFFING, AND MAILING

The LC proposal also calls for the elimination of LC's involvement with folding, stuffing, and mailing the UBs. As stated by Hanson, "It is not cost effective for Little Canada to provide you with this service given we do not even do it with our own bills. As an alternative, we took the liberty to obtain a quote from Loan Oak Companies (Eagan). This is the company that prepares our bills for mailing. They would charge Birchwood a flat rate of \$125 per quarter plus and an additional \$60 for pick-up/delivery (\$30 each trip) of the bills. The total of \$185 is well below the \$368 it currently costs Little Canada to do this. Their costs are less due to efficiencies they achieve in the use of folding/stuffing equipment and in affixing postage." This rate is exclusive of postage costs of \$172.80; however, including those costs results in a total cost per quarter of \$357.80, still below the labor costs LC charges the City.

Other Options

Staff would like to identify two other options for the Council to consider as alternatives to LC:

1. *Having the City of White Bear Lake, from which the City purchases its water, bill Birchwood customers directly.* Staff understands and appreciates the Council's desire to work more closely with WBL on a whole host of municipal services. If so directed, staff can contact WBL to ascertain its interest in providing UB services to the City.
2. *Returning UB services "in house" with current staff.* Given the relative stability with Birchwood's staffing, the Council may want to explore having the existing staff process UBs. If so directed, staff can research the costs (both start-up and ongoing) of returning this function to City Hall, as well as the advantages and disadvantages to the City in doing so.

NEWSLETTER PRINTING AND MAILING

Next, staff would like to address the costs of printing, folding, and stuffing the City's quarterly newsletter. LC indicated that the costs have increased with the use of four-color newsletters. These charges currently come to \$317.40 per quarter, as provided by LC as follows:

Costs: Staff Time - Kathy 1 ½ hours folding and Lisa 30 minutes for printing

(1.5 * \$46.95 + .5 * 35.95 = \$88.40)

(Maintenance Agreement 1600 pages at .109 per copy = \$174.40)

(Copy Machine Costs = 1600 pages at .015 per copy = \$24.00)

(Paper = \$5.60)

(Folder/Inserter = \$25)

Total Cost = \$317.40/Qtr

\$1,269.60/Yr

Hanson noted that "Little Canada would prefer not to provide these services based on our costs of the amount of time involved with our staff and given the fact we have been running shorthanded for over ½ a year. When coupled with our cost to provide this service of \$317.40 per quarter versus the \$100 we are presently charging you, we feel there are better options for both parties. In this case, we took the liberty of obtaining a quote from Nystrom Publishing (Maple Grove) for newsletter printing. This is the company we have used for many years and in our price checking, they have consistently been the most competitive. Their quote to print and fold your newsletter based on 400 copies a quarter and in full color is \$390.10 plus sales tax. It may also be possible to find lower rates at a copy/printing center given our color cost per copy is fairly high."

Staff contacted Nystrom Publishing for an updated quote that reflected charges for a newsletter larger than 4 pages, which was the basis for the quote. It was determined that the \$390.10 charge includes \$30.00 for transport from Maple Grove to Birchwood, a charge that can be saved by having me pick up the finished newsletters on my way into City Hall. Nystrom also indicated it can mail out the newsletter and is preparing a quote for that service. The Council may want to consider having volunteers stuff the newsletters into envelopes and affix postage as a way to engage City residents.

It is important to note that LC billed Birchwood \$100.00 per quarter for printing, folding, and stuffing newsletters. This amount has proven to be inadequate to recover the cost of production and distribution of the newsletter.

Staff has not had the opportunity to determine what other vendors would charge for this service. However, the March 2012 newsletter is ready to go out. Consequently, staff recommends using Nystrom for newsletter production this one time, pending the securing of cost estimates from other vendors.

There are benefits to having the newsletter mailed separately from the UBs. One example is the Winter newsletter that goes out in December. If that newsletter could go out in January, it could include the freshly-minted budget. As it is now, the approved budget goes out with the Spring newsletter. Additionally, if the Council desires to have volunteers involved in production and distribution of the newsletter (not to mention creation), it would give the volunteers a closer connection with their City and the community.

Staff also recommends the Council consider alternatives to printing and distributing "hard copy" newsletters. For example, the City could post the newsletter on its website and advise residents through either the cable access channel and/or the CodeRED general notification system that the newsletter has been posted.

COST RECOVERY ISSUE

Finally, LC City Administrator Hanson noted that LC has lost (called "unrecovered costs") totaling \$5,433.01 that it would like to recover. Hanson wants to make it clear that it is LC's " fault it did not recover our costs to an adequate level and Birchwood Village has done nothing to contribute to this situation." Hanson noted that "we (LC) need to be accountable to our citizens and ensure we are not providing services to others that don't fully reimburse our costs." Hanson concluded that "we hope we have demonstrated a good working relationship with you and that you would be willing to work with us to continue it into the future."

The detail on the "unrecovered costs" is as follows:

Impact to Little Canada based on 2012 #'s

Billing - 1st Qtr 2010 (8 Quarters * \$260.75 = \$2,086.00)

Utility Bill Stuffing & Newsletter – 2nd Qtr 2010 (7 Quarters * \$243.03 = \$1,701.21)

Newsletter Printing – 2nd Qtr 2010 (7 Quarters * \$217.40 = \$1,521.80)

Difference in Lower Newsletter Billing Cost (2 Qtrs @ \$38 versus \$100 = \$62 * 2 = \$124)

Unrecovered Costs to Little Canada To Date = \$5,433.01

Hanson has detailed his recommendations on how the City can reimburse LC for these "unrecovered costs" as follows:

- 1. Make quarterly cash payments of 25% of the amount. To incent this option, Little Canada will discount the amount due to \$4,800 so the payment would be \$1,200 per quarter.*
- 2. Increase the quarterly billing charge to \$6.25 per quarter until the full amount is recovered. This would generate \$403.20 additional revenue per quarter and \$1,612.80 per year. It would take just under three and ½ years to recover the amount desired. If this option were selected, we would only increase the base rate of \$5.20 per quarter by inflation and then add the fixed amount of \$1.05 per account per quarter to the new, annual amount. If Birchwood Village decides to terminate our billing relationship, then any amount still outstanding based on the initial unrecovered amount of \$5,433.01 less the amount recovered from the additional quarterly charge would be immediately due and payable.*

The issue of whether the City is liable for this overage is beyond the scope of this memo; consultation with the City Attorney is recommended.

CONCLUSION

From the supporting materials of this memo, the City's cost of publishing the newsletter would be \$390.10 + tax for a four page newsletter if the City uses Nystrom for publication. \$30.00 of that cost is transportation between Maple Grove and Birchwood; that amount can be saved if staff picks up the newsletter on the way into the office. Costs would be higher for larger newsletters (e. g. to include the budget). Over the course of a quarterly newsletter, that comes to close to \$1,600.00 + tax. That figure does not include postage and envelopes, and staff time to stuff the envelopes and affix postage. Staff estimates that, at 50 cents per envelope for 370 newsletters (\$185.00), the cost increases to \$2,340.00 per year just for the newsletter.

For sending out the utility bills, it appears from the supporting materials in this memo that Lone Oak's quarterly costs of \$185.00 + postage (0.45 x 370=\$166.50) comes out to \$351.50 per quarter.

The Council may want to consider some alternatives to the current method of mailing UBs. There are quite a few cities that have gone to the postcard system, where the bill is on a postcard and the resident

would be responsible for securing their own envelope for mailing. The City does receive a substantial number of UB payments in the City Hall mail slot, so that may be a viable option.

It appears that there are four questions for the Council to consider:

1. Does the City Council desire to maintain LC as the vendor for preparation of the UBs? Or does the Council desire to receive quotes from other vendors?
2. Does the City Council desire to investigate alternative UB billing cycles, such as trimesters or semi-annual?
3. Does the City Council desire to bring UB preparation "in house"?
4. Does the City Council desire to end hard-copy publication of the newsletter?

If you have any questions or comments, feel free to contact me at your convenience.

MEMORANDUM OF UNDERSTANDING

To: Mary Wingfield, Mayor
City of Birchwood Village City Council
From: Shelly Rueckert, Finance Director
Little Canada City Council
SUBJECT: TERMS OF AGREEMENT FOR UTILITY BILLING SERVICES
Date: Friday, April 09, 2010

The purpose of this Memorandum of Understanding is to outline our agreement for the services desired by the City of Birchwood Village (Birchwood) from the City of Little Canada (Little Canada) relating to the billing of utility accounts for Birchwood's residents.

Scope of Work:

- Birchwood will provide beginning account balances and services to be billed for each account. Little Canada will set up the Birchwood account in its utility billing system and it will be segregated from the Little Canada account by billing cycle. Other billing information such as owner name, service address, billing address, meter location, remote type, etc. will be entered in each account's maintenance file as provided by Birchwood or the meter reading vendor.
- Birchwood will provide their 2010 rate structure and Little Canada will set up the same in its billing software. Policies or written directions regarding late fees and other billing adjustments will be provided to Little Canada. Annually, or as required, Birchwood will provide Little Canada with any changes to their rate structures, three weeks prior to the billing date.
- All accounts will be billed on a quarterly basis.
- Birchwood's vendor will provide meter-reading services. Meter readings will be provided to Little Canada three weeks prior to bill date. Little Canada will work directly with the vendor in order to receive the readings in the format preferred. Little Canada will also provide the meter-reading vendor with the information necessary to keep their route sheets current.
- Billing dates will be March 1st, June 1st, September 1st, and December 1st. Bills will be delivered to Birchwood within two days of bill date if Birchwood is processing the mailing, and if these dates fall on a weekend or holiday, they will be delivered on the next business day. If unforeseeable issues arise that will preclude the timely delivery of the bills then Little Canada will contact Birchwood and provide a revised delivery date. If Little Canada is processing the mailing, the bills will be mailed on the above dates unless unforeseeable

issues arise that will preclude the timely mailing of the bills, in which case Little Canada will contact Birchwood and provide a revised mailing date.

- Bills will be generated in a letter style on plain paper stock, or if provided by Birchwood, a watermark stock similar to that used by Little Canada. Little Canada will provide a summary of the services billed per quarter. Little Canada will also track the water usage billed to customers versus the water purchased by Birchwood (later provided by Birchwood) in order to determine the percentage of unallocated water. This will be provided to Birchwood two weeks after the quarter billing has been processed.
- Little Canada will collect and process the utility bill payments from Birchwood's residents. Customer return envelopes for utility payments will be directed to Little Canada and will be provided along with the bills. Any payments received at Birchwood City Hall will be submitted to Little Canada in weekly batches. Payments returned via direct mail or forwarded by Birchwood will be deposited to Birchwood's US Bank account at the Little Canada branch location. Little Canada will update the account balances for payments received and provide to Birchwood in electronic format the documentation necessary to code and post the cash receipts to the City's General Ledger.
- Billing questions will be handled initially by Little Canada. Little Canada will provide information regarding, balances, payments applied, usage and read dates. If there are any on-going concerns regarding water usage, these will be turned over to Birchwood for further investigation.
- Final Bills will be processed by Little Canada, which will require Birchwood's assistance in coordinating readings, obtaining forwarding addresses and new billing information.
- Little Canada will provide a listing of past due accounts for possible certification. Birchwood will be responsible for sending certification notices to the customers, Certification to taxes to Washington County and providing Little Canada with the final listing of certified accounts and these accounts will be adjusted appropriately.
- Little Canada will inform Birchwood of any equipment failures it detects, such as defective remotes and slow meters. Little Canada will advise Birchwood of the steps necessary to correct the issue.

Compensation and Terms of Payment:

The one time fee to set-up the Birchwood billing information is \$3,750. Little Canada will charge \$3.65 per account to process the billing, deliver the bills for distribution and provide the accounting reports to record the Utility billing transactions into the Birchwood general ledger. Birchwood will retain their meter-reading vendor and continue to internally process the bill mailing. If Birchwood chooses to have Little Canada arrange for these services, the cost for these services would be negotiated.

Warranty:

The City of Little Canada agrees and warrants to the City of Birchwood that it will provide the utility billing services and work product set forth in this agreement in a timely, precise, and accurate fashion to the best of its skill and ability.

Indemnity, Term and Termination:

It is the intent of the parties hereto that each shall remain responsible for the intentional or negligent actions of its own respective employees, agents, and/or representatives taken pursuant to this agreement. The City of Birchwood Village agrees to defend, indemnify, and hold the City of Little Canada and its employees, harmless from any claims, demands, actions, or causes of action, including reasonable attorneys fees, brought against or incurred by the City of Little Canada and its employees arising out of or relating to this Agreement, for injury to, death of, or damage to the property of any third person or persons, arising out of any act or omission on the part of the City of Birchwood Village, and its employees, agents, or representatives. The City of Little Canada agrees to defend, indemnify, and hold the City of Birchwood Village and its employees, harmless from any claims, demands, actions, or causes of action, including reasonable attorneys fees, brought against or incurred by the City of Birchwood Village and its employees arising out of or relating to this Agreement, for injury to, death of, or damage to the property of any third person or persons, arising out of any act or omission on the part of the City of Little Canada, and its employees, agents, or representatives.

The term of this agreement is one year and can be renewed annually with an inflationary increase (related to Little Canada's internal cost) in billing fee agreed upon by both parties in writing. Either Party can terminate this agreement with six months notice without cause.

Contact Person:

The primary contact and person to whom any notices required under this agreement shall be directed are as follows:

City of Birchwood Village:
Cindie Reiter, City Clerk
207 Birchwood Avenue
Birchwood, MN 55110
Phone: 651-426-3403
Email: birchwoodvillage@comcast.net

City of Little Canada:
Shelly Rueckert, Finance Director
515 Little Canada Road East
Little Canada, MN 55117
Phone: 651-766-4035
Email: shelly.rueckert@ci.little-canada.mn.us

The parties, by their undersigned representatives, hereby agree to the terms set forth above:



Mayor, City of Little Canada

4-19-2010
Date



Mayor, City of Birchwood Village

5-11-10
Date



XFINITY Connect

bwclerk@comcast.net

Font Size

From : Joel Hanson <joel.hanson@ci.little-canada.mn.us>

Thu, Mar 01, 2012 09:47 PM

Subject : <No Subject>**To :** bwclerk@comcast.net

Dale:

I was out of the office the past couple of days and I thought it important to clarify the e-mails Jessica is sending you.

With the information I sent you last Friday, you will notice that Little Canada has incurred additional costs well beyond the rates Birchwood Village is reimbursing us. As I said in that letter, that isn't through any fault of yours. However, I need to make sure Little Canada residents are not having their resources spent in another community without an appropriate return. Our goal is not to nickel and dime you guys. But, I do need to make sure we are recovering our costs and ideally, I would like to recover some/most of those past costs.

After our meeting, I did take a closer look at the time/costs associated with providing the various services. I wasn't comfortable showing a range of hours so I pulled more information together to get a better estimate of the time expended. That triggered the revisions to the numbers that were contained in my e-mail to you versus the sheet we discussed during our meeting last Wednesday.

I also instructed Jessica to document the recent billing run to make sure some of estimates of time spent were accurate. In doing so, she pointed out to me some additional work that Shelly was doing that was not included in our previous calculations such as meter change outs. We can surely help with that service, but I need to understand what exactly we are doing. (Are we scheduling change outs with another entity or are you looking for help in the physical change out itself? Jessica also pointed out we need to ensure we have a good process for this as a lot of bills are being estimated because change-outs are apparently not occurring in a timely fashion.)

I also asked her to document with you any variations in the service arrangement versus what is written in the agreement (i.e. having bills in the mail before 3/1 versus waiting for the newsletter to include in the same mailing). I'm not having her do this to be a pain for you, but rather to ensure we are not violating the terms of our agreement. I want to make sure we are living up to our end of the deal given the fact I'm asking to be reimbursed for some of our past costs.

I would like to know if we need to talk about my e-mail of last Friday before you present it to your Council. I also want to know if I should plan on attending the Council meeting.

Let me know how you want to proceed.

Thanks

Joel

PROPOSAL

Utility Billing Services:

Our arrangement would retain the same duties as listed in present relationship for utility billing as detailed above and/or contained in our current agreement. The only change we would make is all customer service calls would be made to Jessica Jagoe given our current employee situation (i.e. the loss of Shelly Rueckert as our Finance Director).

Little Canada's costs to provide Utility Billing Services equal \$6,649.40 per year or \$1,662.35 per quarter. The quarterly amount equates to a billing charge per customer of \$4.33 per quarter. Little Canada believes a 20% markup is reasonable to cover unknown costs. That yields a quarterly charge per account of \$5.20 versus the current rate of \$3.65. It should also be noted that the current rate of \$3.65 was established in 2010 and has not received any inflationary adjustments.

Proposal for Utility Billing: \$5.20 per account per quarter effective with the 1st Quarter's billing. This constitutes an amendment to our current agreement.

Unrecovered Costs:

Little Canada would also like to recover the unrecovered costs we have incurred to date and as noted earlier in the amount of \$5,433.01.

We see two options to do so.

- 1. Make quarterly cash payments of 25% of the amount. To incent this option, Little Canada will discount the amount due to \$4,800 so the payment would be \$1,200 per quarter.**
- 2. Increase the quarterly billing charge to \$6.25 per quarter until the full amount is recovered. This would generate \$403.20 additional revenue per quarter and \$1,612.80 per year. It would take just under three and ½ years to recover the amount desired. If this option were selected, we would only increase the base rate of \$5.20 per quarter by inflation and then add the fixed amount of \$1.05 per account per quarter to the new, annual amount. If Birchwood Village decides to terminate our billing relationship, then any amount still outstanding based on the initial unrecovered amount of \$5,433.01 less the amount recovered from the additional quarterly charge would be immediately due and payable.**

We also want to make it clear that it is our fault we did not recover our costs to an adequate level and Birchwood Village has done nothing to contribute to this situation. However, we need to be accountable to our citizens and ensure we are not providing services to others that don't fully reimburse our costs. To that end, we hope we have demonstrated a good working relationship with you and that you would be willing to work with us to continue it into the future.

Birchwood Village/Little Canada Service Relationship

Utility Billing Services:

Contract Amount - \$3.65 * 384 accts = \$1,401.60/ Qtr \$5,606.40/Yr

Little Canada's Cost of Service:

Enter Readings – Staff Time 2 Hours
(\$38.82 * 2 = \$77.64)

Preparation of Bills – Staff Time 3 hours
*Includes entering of readings and providing Birchwood a list of rereads, possible remote repairs and vacant properties
(\$38.82 * 3 = \$116.46)

Printing Costs **(384 bills * .0302/copy = \$11.60)**

Receipting/Deposits – 53 batches in 2011 = 13.25 batches per qtr – Staff Time = 1.25 hour per batch
(16.5 * 35.95 = \$595.33)
(Mileage 4 miles * \$.555 per mile * 13.25 = \$29.41)

Bank Deposits – 13.25 batches per quarter - (estimate 15 minutes per trip, plus mileage reimbursement)
(13.25 trips * .25 hrs = 3.3 hrs * \$35.95 = \$118.63)

Journal Entries – Finance Director - 5 minutes per batch
(\$53.96 * .0833 * 13.25 = \$59.56)

Invoicing services – 4 times a year – Lisa 1 hour total per year/ 15 minutes per qtr
(.25 hour * \$35.95 = \$8.99)

Ordering/Receipt of Supplies – Lisa – once per year – 30 minutes
(.125% of an hour - \$4.49)
*Includes paper, return envelopes, and mailing envelopes

Customer Service Time, Re-addressing Returned Bills, Delinquent Certifications – estimate 10 hours per qtr
(10 hours * \$38.82 = \$388.20)

Contract Oversight

City Administrator Oversight (1 hour * \$90.16 = \$90.16)
Finance Director Oversight (3 hours * \$53.96 = \$161.88)

Total Costs \$1,662.35/Qtr \$6,649.40/Yr

Difference: -\$260.75/Qtr -\$1,043.00/Yr

Other Services Not Covered in Agreement:

Utility Bill Stuffing & Newsletter - Folding/Stuffing/Affixing Postage/Delivery to Post Office
\$125/Qtr \$500/Yr

Costs: Staff Time - Kathy 1 hour, Jessica 4 hours, and Lisa 3 hours

(1 * \$46.95 + 4 * 38.82 + 4 * 35.95 = \$343.03)

(1 Hour Folder/Inserter = \$25.00)

Total Cost = \$368.03/Qtr

\$1,472.12/Yr

Difference: -\$243.03/Qtr

-\$972.12/Yr

Newsletter Printing – Bill Flat Rate of \$100/Qtr

\$100/Qtr

\$400/Yr

Costs: Staff Time - Kathy 1 ½ hours folding and Lisa 30 minutes for printing

(1.5 * \$46.95 + .5 * 35.95 = \$88.40)

(Maintenance Agreement 1600 pages at .109 per copy = \$174.40)

(Copy Machine Costs = 1600 pages at .015 per copy = \$24.00)

(Paper = \$5.60)

(Folder/Inserter = \$25)

Total Cost = \$317.40/Qtr

\$1,269.60/Yr

Difference: -\$217.40/Qtr

-\$869.60/Yr

Total Impact = -\$721.18/Qtr - \$2,884.72/Yr

Impact to Little Canada based on 2012 #'s

Billing - 1st Qtr 2010 (8 Quarters * \$260.75 = \$2,086.00)

Utility Bill Stuffing & Newsletter – 2nd Qtr 2010 (7 Quarters * \$243.03 = \$1,701.21)

Newsletter Printing – 2nd Qtr 2010 (7 Quarters * \$217.40 = \$1,521.80)

Difference in Lower Newsletter Billing Cost (2 Qtrs @ \$38 versus \$100 = \$62 * 2 = \$124)

Unrecovered Costs to Little Canada To Date = \$5,433.01

Little Canada Staff Rates

Jessica @ 38.82 per hour

Kathy @ 46.95 per hour

Lisa @ 35.95 per hour

Finance Director @ \$53.96

City Administrator @ \$90.16

Utility Bill Stuffing & Newsletter - Folding/Stuffing/Affixing Postage/Delivery to Post Office:

It is not cost effective for Little Canada to provide you with this service given we do not even do it with our own bills and/or newsletter. As an alternative, we took the liberty to obtain a quote from Loan Oak Companies (Eagan). This is the company that prepares our bills for mailing. They would charge Birchwood a flat rate of \$125 per quarter plus and additional \$60 for pick-up/delivery (\$30 each trip) of the bills. The total of \$185 is well below the \$368 it currently costs Little Canada to do this. Their costs are less due to efficiencies they achieve in the use of folding/stuffing equipment and in affixing postage.

Another option may be to utilize your excellent volunteer contingent to do this work thereby saving the \$180.

Proposal:

- 1. Birchwood Village contracts with Loan Oak at a cost of \$180 per quarter.**
- 2. Birchwood Village attempts to locate another vendor similar to Loan Oak at a lower cost.**
- 3. Utilize Birchwood Village volunteers to undertake these tasks.**

Newsletter Printing:

Little Canada would prefer not to provide these services based on our costs of the amount of time involved with our staff and given the fact we have been running shorthanded for over ½ a year. When coupled with our cost to provide this service of \$317.40 per quarter versus the \$100 we are presently charging you, we feel there are better options for both parties. In this case, we took the liberty of obtaining a quote from Nystrom Publishing (Maple Grove) for newsletter printing. This is the company we have used for many years and in our price checking, they have consistently been the most competitive. Their quote to print and fold your newsletter based on 400 copies a quarter and in full color is \$390.10 plus sales tax. It may also be possible to find lower rates at a copy/printing center given our color cost per copy is fairly high.

Proposal:

- 1. Birchwood Village contracts with Nystrom Publishing to print Birchwood's newsletter at a cost of \$390.10 plus tax per quarter.**
- 2. Check pricing at copy/print shop to see if lower costs can be obtained.**

Little Canada appreciates our relationship with the City of Birchwood Village and we hope we can continue it on a mutually beneficial basis. Thank you for considering our proposal.

By: Joel Hanson, City Administrator

Jessica Jagoe

From: Lynn Reemtsma <lynn@nystrompublishing.com>
Sent: Monday, February 06, 2012 3:50 PM
To: Jessica Jagoe
Subject: RE: Newsletter Quote

Jessica:

Print 2 sheets, each 8.5 x 11, fold in 1/3's in full color, and fold each in 1/3's : \$390.10 (plus sales tax).

Thanks,

Lynn Reemtsma
Nystrom Publishing Company, Inc.
9100 Cottonwood Lane
Maple Grove MN 55369
Direct 763.255.3501
Cell 763.234.8013
lynn@nystrompublishing.com

From: Jessica Jagoe [<mailto:jessica.jagoe@ci.little-canada.mn.us>]
Sent: Friday, February 03, 2012 3:19 PM
To: lynn@nystrompublishing.com
Subject: Newsletter Quote

Lynn -

Will you please give me a quote on what Nystrom would charge to print this newsletter? They need 400 copies. Right now they print it on 8 1/2 x 11, color, duplexed, no binding. The newsletter is folded and sent to residents in a window envelope with their water bill.

Thanks
Jessica

Jessica Jagoe

From: Lynn Reemtsma <lynn@nystrompublishing.com>
Sent: Monday, February 06, 2012 3:50 PM
To: Jessica Jagoe
Subject: RE: Newsletter Quote

Jessica:

Print 2 sheets, each 8.5 x 11, fold in 1/3's in full color, and fold each in 1/3's : \$390.10 (plus sales tax).

Thanks,

Lynn Reemtsma
Nystrom Publishing Company, Inc.
9100 Cottonwood Lane
Maple Grove MN 55369
Direct 763.255.3501
Cell 763.234.8013
lynn@nystrompublishing.com

From: Jessica Jagoe [<mailto:jessica.jagoe@ci.little-canada.mn.us>]
Sent: Friday, February 03, 2012 3:19 PM
To: lynn@nystrompublishing.com
Subject: Newsletter Quote

Lynn -

Will you please give me a quote on what Nystrom would charge to print this newsletter? They need 400 copies. Right now they print it on 8 1/2 x 11, color, duplexed, no binding. The newsletter is folded and sent to residents in a window envelope with their water bill.

Thanks
Jessica

Jessica Jagoe

From: Scott Smith <ssmith@loneoakmn.com>
Sent: Monday, February 06, 2012 8:40 AM
To: Jessica Jagoe
Subject: Re: FW: Little Canada

Hi Jessica,

The numbers below look fine. Postage is now at \$.45 each letter.

Thanks for asking and have a great day.

On 2/3/2012 4:19 PM, Jessica Jagoe wrote:

Scott -

I have this old quote for services to mail 400 statements. Would you please update it and let me know if pricing has changed.

Thanks
Jessica

From: Scott Smith [<mailto:ssmith@loneoakmn.com>]
Sent: Tuesday, February 09, 2010 9:34 AM
To: Jessica Jagoe
Subject: Re: Little Canada

Hi Jessica,

Our minimum processing fees would apply. Our fees would be as follows:

- Fold (1), insert (2), seal, apply postage: \$125.00
- Pick up statements: \$ 30.00
- PO Delivery: \$ 30.00

Total Estimated Costs: \$185.00 + postage

Any additional inserts would be billed at \$15.00 per insert, and \$15.00 for folding (if necessary). Since there is less than 500 statements, the invoices would need to be mailed at 1st Class rates, as 500 or more letters are needed in order to obtain Presorted discounts.

Thank you,

Jessica Jagoe wrote:

It would be totally separate from ours. Different cycle, but still four times a year.

Jessica

From: Scott Smith [<mailto:ssmith@loneoakmn.com>]
Sent: Monday, February 08, 2010 4:36 PM
To: Jessica Jagoe
Subject: Re: Little Canada

Jessica Jagoe wrote:

Scott -

The City of Little Canada may take over the billing for the City of Birchwood Village. I was wondering if you could give me a estimate of what you would charge to process and mail out their utility bills (same as ours). The service would be a separate run from ours, but still done 4 times a year (quarterly). I estimate they have 350 bills. None of their accounts are presorted by zip code and I would think pay full postage \$.44 per bill. Plus, what would your rate be if they had another insert within utility bills.

If I forgot something and you need more info, please let me know.

Thanks.

Jessica

Hi Jessica,

Any chance their bills would be run at the same time as yours? Could we make one trip to get your bills and theirs, or would we be looking at completely different timing on their run vs. your run and we should price the project based on their run being totally separate from yours?

Thank you,

--

Scott A. Smith
Lone Oak Companies
3177 Dodd Road
Eagan, MN 55121
651-681-0052 (phone)
651-789-1132 (direct)
651-681-0594 (fax)
612-889-9543 (mobile)
ssmith@loneoakmn.com

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Scott A. Smith
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Scott A. Smith
Lone Oak Companies
3177 Dodd Rd
Eagan, MN 55121

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To: Jessica Jagoe
Subject: Re: FW: Little Canada

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Jessica

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Thank you,

Jessica Jagoe wrote:

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Jessica

TO: CITY COUNCIL MEMBERS
FROM: Alan Mitchell, Mayor
SUBJECT: Personnel Policies
DATE: March 5, 2012

The bylaws for the Personnel Committee provide that the Committee should develop for Council consideration personnel policies relating to hiring practices and grievance procedures and other matters. I think it would be helpful to the conduct of city business to have such policies in place to guide further action by staff and the Council.

Jennifer Nodes, an attorney with the Eckberg Lammers firm (the city's attorneys), has had a great deal of experience developing such policies for cities. Jennifer has indicated that she could put together a set of policies for the city of Birchwood with a few hours of effort. I have asked the city clerk to place an item on the March Council agenda asking the Council to authorize Jennifer to spend up to five hours on that effort.

The Personnel Committee is scheduled to meet on Monday, March 19. Jennifer said she would be available to attend that meeting and present drafts of various personnel policies that the Committee can review and determine whether to bring to the Council for adoption.

XFINITY Connect

bwclerk@comcast.net

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RE: DO NOT HIT REPLY ALL Draft Minutes - February 14th Council meeting

From : Anthony E Sampair <ASampair@CBBURNET.COM> Tue, Mar 06, 2012 07:07 PM
Subject : RE: DO NOT HIT REPLY ALL Draft Minutes - February 14th Council meeting
To : bwclerk@comcast.net

It is my understanding that we want employee grievance policy draft and league of minnesota's outline for same to be in the packet for March 13th, so that we can decide if it is necessary for an attorney do even draft a policy that we already have two drafts to review.....Dale please have the above mentioned drafts in the council packet for March 13th.....I believe I have this authority as a PC member....

From: bwclerk@comcast.net [mailto:bwclerk@comcast.net]
Sent: Tue 3/6/2012 10:47 AM
To: Barb Carson; Alan Mitchell; Jane Harper; Mark Peterson; Sampair, Anthony E
Cc: cindie311@gmail.com
Subject: DO NOT HIT REPLY ALL Draft Minutes - February 14th Council meeting

For your review. It is my understanding that the ordinances that the Council asked the PC to review are up for public hearing in March. I have not yet heard back from the PC on their comments. Please advise if the Council prefers to have the public hearings on those draft ordinance changes at the April meeting. I need to advise the Council that I will be out of town on April 10 and will not be attending the Council meeting that day. Cindie is aware of my absence and will be taking minutes at that meeting.

Also, I will be out of the office Monday March 12 to get a colonoscopy-OUCH!

CITY OF BIRCHWOOD VILLAGE

Dale Richard Powers, MA, AICP
City Clerk/Coordinator
207 Birchwood Avenue
Birchwood Village, MN 55110
651-426-3403 tel
651-426-7747 fax
320-493-8930 cell

**CITY OF BIRCHWOOD VILLAGE
GRIEVANCE PROCEDURE**

Section 1. Definition of a Grievance. A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of employment.

Section 2. Grievance Procedure. Recognizing that grievances should be raised and settled promptly, a grievance must be raised within ten (10) working days following the time when the employee gained knowledge of its occurrence. Grievances shall be processed as follows:

Subsection 2.1. Step One. The employee shall inform the Personnel Committee that the employee intends to file a written grievance unless the Personnel Committee is able to provide a satisfactory remedy. If necessary, the employee should submit a written complaint to the Personnel Committee. The Personnel Committee shall attempt to adjust the grievance and shall respond to the employee within fourteen (14) calendar days of the discussion.

Subsection 2.2. Step Two. If the grievance is not settled utilizing Step One, five (5) calendar days will be allowed for preparation after which time the grievance shall be referred to the City Council for consideration at its next regular council meeting. The Council shall render its final decision in writing within fourteen (14) calendar days after the hearing has been held. In cases of suspensions, demotions, and/or terminations, the City Council and the employee may, by mutual agreement, agree to petition the Bureau of Mediation Services (BMS) for mediation of the dispute. If the services of BMS are used, the City Council shall render its final decision in writing within fourteen (14) so mutaf the employee requests the grievance be submitted for mediation, the City Council shall render its final decision in writing within seven (7) calendar days after the conclusion of the mediation meetings. The Council's decision shall be in writing to the grieved employee.

Subsection 2.3. Step Three. If the grievance is not settled utilizing Steps One and Two, the grievance may be taken to arbitration, and the decision of the arbitrator shall be final and binding on the parties. If the parties are unable to agree upon the appointment of the arbitrator within five (5) days after submission of the grievance to arbitration, either party may then request the Director, Minnesota Bureau of Mediation Services, to furnish a list of five (5) prospective arbitrators. From this list, each party shall, in turn, strike one name until one name remains, and the last remaining individual shall be the arbitrator. A hearing on the grievance will be held promptly by the arbitrator and a decision shall be rendered by him within thirty (30) days after the date of hearing. All expenses and costs of the arbitrator shall be shared and assessed equally to the parties. Sundays and holidays shall not be included during these proceedings.

Subsection 2.4. Arbitrator's Authority. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the employer and employee, and shall have no authority to make a decision on any other issue not so submitted. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The arbitrator's decision shall be final and binding on both the employer and the employee and shall be based solely on the arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented. If either party desires a verbatim record of the proceedings, the cost shall be shared equally.

Section 3. Waiver. If a grievance is not presented within the time limits set forth above, it shall be considered "waived". If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of the employer's last answer. If the employer does not answer a grievance or an appeal thereof within the specified time limits, the employee may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each step may be extended by mutual agreement of the Employer and the Union.

bargaining unit may be returned to the employee's previously held job classification in the bargaining unit, at the discretion of the Employer or the Employee. In this instance, any employee hired into the vacancy may be terminated by the Employer without it being a violation of any of the provisions of this Agreement.

Section 5. Employees shall, during the probationary period, accumulate paid sick and vacation leave as provided by Articles _____ and _____. Employees may take leaves of absence during the probationary period at the sole discretion of the Employer.

^{xii} **Article 10. GRIEVANCE PROCEDURE**

Section 1. Definition of a Grievance. A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement.

Section 2. Processing of a Grievance. It is recognized and accepted by the Union and the Employer that the processing of grievances as hereinafter provided is limited by the job duties and responsibilities of the steward and grievant employee(s) and shall therefore be accomplished during normal working hours only when consistent with such employee duties and responsibilities. The aggrieved employee(s) and the steward representative shall be allowed a reasonable amount of time without pay, for the investigation or presentation of grievances during normal working hours provided the aggrieved employee(s) and the steward have previously notified and received approval from their designated supervisor where the designated supervisor has determined that such absence is reasonable and would not be detrimental to the work programs of the Employer. The designated supervisor will be notified when the steward or grievant employee(s) returns to the work station and resumes duties.

Section 3. Procedure.

Option A:

Grievances, as defined by Section 1, shall be resolved in conformance with the following procedure:

Step 1. An employee claiming a violation concerning the interpretation or application of this Agreement shall, within ten (10) calendar days after the first occurrence of the event constituting such alleged violation, sign and present such grievance in writing to the employee's direct supervisor as designated by the Employer. The Employer designated Step 1 representative must receive the grievance. The Employer designated Step 1 representative will discuss the matter with the grievant and Union representative and give

an answer to such Step 1 grievance to the Union representative within ten (10) calendar days after receipt.

A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the Agreement allegedly violated, the remedy requested, shall be signed by the grievant and shall be appealed to Step 2 within ten (10) calendar days after the Employer-designated representative's final answer in Step 1. Any grievance not appealed in writing to Step 2 by the Union within ten (10) calendar days shall be considered waived.

Step 2.

If appealed to Step 2, the written grievance shall be presented by the Union and discussed with the Employer designated Step 2 representative. The Employer designated Step 2 representative must receive the grievance. The Employer-designated representative shall give the Union representative the Employer's Step 2 answer in writing within ten (10) calendar days after receipt of such Step 2 grievance.

A grievance not resolved in Step 2 may be appealed to Step 3 within ten (10) calendar days following the Employer-designated representative's final Step 2 answer. Any grievance not appealed in writing to Step 3 by the Union within ten (10) calendar days shall be considered waived.

Step 3.

If appealed, the written grievance shall be presented by the Union and discussed with the Employer-designated Step 3 representative. The Employer designated Step 3 representative must receive the grievance. The Employer-designated representative shall give the Union representative the Employer's answer in writing within ten (10) calendar days following the Employer-designated representative's final answer in Step 3.

Any grievance not appealed in writing to Step 4 by the Union within ten (10) calendar days after receipt of such Step 3 grievance final answer shall be considered waived. A grievance not resolved in Step 3 may be appealed to Step 4 within ten (10) calendar days following the Employer-designated representative's final answer in Step 3.

Step 4. The Union shall notify the Employer of a grievance unresolved in Step 3 and appealed to Step 4 in writing within ten (10) calendar days following the Employer-designated representative's final answer in Step 3. The Union shall notify the Bureau of Mediation Services within ten (10) calendar days of the notice of appeal to the Employer that the Union is submitting the matter to arbitration and the Union shall request that the Bureau of Mediation Services provide the parties with a list of arbitrators. The selection of an arbitrator shall be made in accordance with the rules and regulations as established by the Bureau of Mediation Services. The Union must contact the Employer within ten (10) calendar days of the date that the Bureau of Mediation Services has mailed the parties a list of arbitrators in order to strike arbitrators or notify the Employer of an objection to the list of arbitrators. The Employer will have a similar obligation to the Union to be prepared to strike arbitrators or notify the Union of an objection to the list of arbitrators. The matter will be then be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act.

Option B:

Grievances, as defined by Section 1, shall be resolved in conformance with the following procedure:

Step 1. An employee claiming a violation concerning the interpretation or application of this Agreement shall, within ten (10) calendar days after the first occurrence of the event constituting such alleged violation, present such grievance to the department head or designee. The department head or designee will discuss the matter with the grievant and Union representative and give an answer to such Step 1 grievance to the Union representative within ten (10) calendar days after receipt.

A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the Agreement allegedly violated, the remedy requested, and shall be appealed to Step 2 within ten (10) calendar days after the department head or designee's final answer in Step 1. Any grievance not appealed in writing to Step 2 by the Union within ten (10) calendar days shall be considered waived.

Step 2. If appealed to Step 2, the written grievance shall be presented by the Union and discussed with the City Administrator or designee. The City Administrator or designee shall give the Union representative the Employer's Step 2 answer in writing within ten (10) calendar days after receipt of such Step 2 grievance.

A grievance not resolved in Step 2 may be appealed to Step 3 within ten (10) calendar days following the City Administrator or designee's final Step 2 answer. Any grievance not appealed in writing to Step 3 by the Union within ten (10) calendar days shall be considered waived.

Step 3. The Union shall notify the Employer of a grievance unresolved in Step 2 and appealed to Step 3 in writing within ten (10) calendar days following the City Administrator or designee's final answer in Step 3. The Union shall notify the Bureau of Mediation Services within ten (10) calendar days of the notice of appeal to the Employer that the Union is submitting the matter to arbitration and the Union shall request that the Bureau of Mediation Services provide the parties with a list of arbitrators. The selection of an arbitrator shall be made in accordance with the rules and regulations as established by the Bureau of Mediation Services. The Union must contact the Employer within ten (10) calendar days of the date that the Bureau of Mediation Services has mailed the parties a list of arbitrators in order to strike arbitrators or notify the Employer of an objection to the list of arbitrators. The Employer will have a similar obligation to the Union to be prepared to strike arbitrators or notify the Union of an objection to the list of arbitrators. The matter will be then be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act.

Section 4. Arbitrator's Authority.

- A. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted.
- B. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of

laws, rules or regulations having the force and effect of law. The arbitrator's decision shall be submitted in writing within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension. The decision shall be binding on both the Employer and the Union and shall be based solely on the arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented. If the grievance is covered by law or statute, or not covered by the express provisions of this Agreement, the arbitrator shall refer the grievance back to the parties without decision or recommendation.

- C. The fees and expenses for the arbitrator's services and proceedings shall be borne equally by the Employer and the Union provided that each party shall be responsible for compensating its own representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings, the cost shall be shared equally.

Section 5. Waiver. If a grievance does not comply with any of the procedural requirements in Section 3, it shall be considered "waived." If a grievance is not appealed in conformance with any of the procedural requirements in Section 3 or any agreed waiver of the requirements thereof, it shall be considered settled on the basis of the Employer's last answer. If the Employer does not answer a grievance or an appeal thereof within the specified time limits, the Union may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each step may be extended by mutual written agreement of the Employer and the Union at each step. In addition, the Employer and Union may mutually agree to extend the time lines and mediate the grievance following the Step 3 final answer from the Employer prior to appealing the matter to Step 4.

Section 6. Class action grievances are not permitted pursuant to this collective bargaining agreement. Grievances must personally affect the named grievant(s).

Section 7. Choice of Remedy. It is specifically understood that any matters governed by statutory or regulatory provisions, except as expressly provided for in this Agreement, shall not be considered grievances under this agreement. In the event that more than one procedure is available for resolution of a dispute arising from any provisions covered by this Agreement, the aggrieved employee(s) shall be limited to one procedure through which remedy may be sought. If the aggrieved employee(s) utilizes a procedure other than the grievance procedure herein, then the employee is precluded from appealing under this procedure. If the employee utilizes this procedure, then the employee is precluded from appealing under another procedure. Employees may use both this grievance procedure and a statutory procedure to the extent that it is required by state or federal law.

618 PARK SPECIAL REVENUE FUND

618.010. PURPOSE. Pursuant to M.S. ##### the City of Birchwood Village establishes a Parks Special Revenue Fund for the purpose of providing funding for improvements to the city parks and park facilities.

618.020. REVENUES. There shall be accumulated in such "Park Special Revenue Fund" the following revenues:

- 1. The dock fees
- 2. The boat slip permit fees
- 3. Boat lift storage permit
- 4. Such other revenues as may be directed by the City Council to be placed in the fund.

618.030. DEFINITIONS.

618.031. PARK IMPROVEMENTS. Park improvements include acquisition, development, maintenance, and enhancements of city park lands and facilities.

618.032. CITY PARK SYSTEM. The city park system includes the following:

- 1. Four dedicated municipal parks (Tighe-Schmidt, Bloomquist Field, Wildwood Avenue Boulevard and Nordling Park);
- 2. Six lake easements providing access to White Bear Lake (Kay, Dellwood, Elm, Birch, Ash and Kurt Feistner Memorial Preserve);
- 3. Several undeveloped areas of open space (Lakewood Rearrangement, Out Lot A, Hall's Marsh, and Birchwood City Hall);
- 4. Existing trails (Ash and Grotto Street walkways); and
- 5. Unimproved street right-of-ways which offer potential pedestrian trails (Birch, Ash, Grotto, Highwood).

618.040. USE OF FUNDS.

618.041. The funds which have been placed within the Park Special Revenue Fund shall be used, at the discretion of the City Council, for park improvement projects within the city park system in accordance with the definitions in section 618.030 and for the following purposes:

- 1. Acquisition of land or physical structures for use in the city park system.
- 2. Development of facilities within the city park system including such things as recreational facilities; access roads; parking lots; boundary fencing, signage; utilities; and restrooms.

3. Maintenance of existing facilities including such things as preventing the deterioration of existing structures; removal of structures not useful to park function, dangerous land forms, or attractive nuisances; and stabilizing or rehabilitating natural resources.
4. Enhancements of existing facilities including capital expenditures that increase the value, improve the usability, and extend the useful life of a facility.

618.042. The City Council may designate the fund proceeds or any portion thereof for use on a specific project or type of improvement and such designation shall have the same effect as the establishment of a separate fund for such purpose.

618.043. The funds in the Park Special Revenue Fund shall not be used to purchase equipment for or fund the general operating costs of the city park system. General operating costs include such things as utility bills, routine grounds maintenance such as lawn mowing, snow removal, wages and benefits of park employees, etc.

618.044. The City Council shall, at its discretion, be authorized to transfer money out of the Park Special Revenue Fund to such other city fund of funds as it deems necessary and proper.

618.050. INVESTMENT OF FUNDS. The City Council shall provide for the temporary investment of funds belonging to the Park Special Revenue Fund in obligations in which investment of municipal funds is authorized by Minnesota Laws and Statutes.

800. PUBLIC WORKS RESERVE FUND

800.010. Pursuant to M.S.A. 471.57 the City of Birchwood Village establishes a fund to be known as the "Public Works Reserve Fund: for the purpose of accounting for designated funds. It is the desire of the City Council to segregate designated and non-designated money into their respective proper accounts. The non-designated funds shall be held in the Capital Improvement Fund as authorized in Chapter 810 of the city code.

800.020. FUNDING OF PUBLIC WORKS FUND. There shall be accumulated in such "Public Works Reserve Fund":

1. The proceeds of any taxes levied for its support.
2. Fund earnings.
3. Such other revenues as may be directed by the City Council to be placed in the fund and are not required by statute to be paid into some other fund or used for purposes other than those provided in 800.30.
4. Any funds that are required to be legally restricted for specific purposes.

800.030. USES OF THE FUND. The "Public Works Reserve Funds" shall be used for the following capital improvements:

- A. Specific capital improvements or type of capital improvement designated by the ordinance establishing the fund.
- B. If not so designated, the "Public Works Reserve Fund" shall be used only for capital improvements of a type for which the City of Birchwood Village is authorized to issue bonds.
- C. City Council may, at the time it places any current revenue in the Public Works Reserve Fund, designate such current revenue or portion thereof for use on a specific project or type of improvement and such designation shall have the same effect as the establishment of a separate public works reserve fund for such purpose.
- D. The City Council may submit to the voters the question of using all or part of any designated funds for some other purpose than for which the funds have been designated. If a majority of votes cast on the question is in favor of such diversion, the stipulated portion of the fund may be used for the newly approved purpose.

800.040. CAPITAL IMPROVEMENT DEFINED. A capital improvement is any purchase, repair, maintenance or replacement of equipment, land or facilities having a value of five

thousand dollars (\$5,000.00) or more and a projected useful life of five or more years. These projects are medium and large in size and are not part of operating capital.

800.050. The City Council shall provide for the temporary investment of money belonging to the Public Works Reserve Fund in obligations in which investment of municipal funds is authorized by M.S.A. 475.66 as amended by Laws 1965, Ch. 300.

800.060. HALL/CEDAR AVENUE PUBLIC WORKS RESERVE FUND.

A. In 1996, the City Council deposited into the Public Works Reserve Fund thirty one thousand eight hundred dollars (\$31,800) for the purpose of funding the first major repairs to Hall/Cedar Avenue (then known as County State Aid Highway 29). These funds were received from Washington County after the turn-back of the jurisdiction of County State Aid Highway 29 to the City.

B. As the city has in place a Public Improvement Financing and Assessment Ordinance (see Chapter 830), the city could finance all or a part of the costs of the Hall/Cedar Avenue improvements through an assessment. The city may use the money within the Public Works Reserve Fund to finance the costs of those improvements until the assessments have been paid off.

C. It is the intention of the city that money paid back to the city by way of assessments or other means are no longer considered designated funds, and may either be re-designated and placed back into the Public Works Reserve Fund, or may be left non-designated and placed into the Capital Projects Fund or such other account as the City Council deems necessary and proper.

810 CAPITAL PROJECTS FUND

810.10. PURPOSE. The City of Birchwood Village establishes a Capital Projects Fund for the purpose of funding capital improvements of the city.

It is the desire of the City Council to segregate designated and non-designated money into their respective proper accounts. The non-designated funds will be held in the Capital Projects Fund. The designated funds will be held in separate funds as authorized in Chapter 800 of the city code.

810.20. CAPITAL IMPROVEMENT DEFINED. A capital improvement is any purchase, repair, maintenance or replacement of equipment, land or facilities having a value of five thousand dollars (\$5,000.00) or more, or e or a projected useful life of five (5) or more years. These projects are medium and large in size and are not part of operating capital.

810.30. USES OF THE FUNDS. The funds which have been placed within the Capital Projects Fund shall be used, at the discretion of the City Council, for capital improvements. The City Council shall also, at its discretion, be authorized to transfer money out of the Capital Projects Fund to such other city fund or funds as the City Council deems necessary and proper.

810.40. FUNDING OF CAPITAL PROJECTS FUND.

There shall be accumulated in such Capital Projects Fund:

1. The proceeds of any taxes levied for its support.
2. Fund earnings.
3. Such other revenues as may be directed by the City Council to be placed in the fund and are not required by statute to be paid into some other fund or used for some other purposes.

810.50. CONSTITUTIONALITY. If any portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

810.60. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

644800. PUBLIC WORKS RESERVE FUND

800644.010. Pursuant to M.S.A. 471.57 the City of Birchwood Villages there is established a fund to be known as the “Public Works Reserve Fund; for the purpose of accounting for designated funds. It is the desire of the City Council to segregate designated and non-designated money into their respective proper accounts. The non-designated funds shall be held in the Capital Improvement Fund as authorized in Chapter 810 of the city code.

800644.020. FUNDING OF PUBLIC WORKS FUND. There shall be accumulated in such “Public Works Reserve Fund”:

1. The proceeds of any taxes levied for its support.
2. Fund earnings.
3. Such other revenues as may be directed by the City Council to be placed in the fund and are not required by statute to be paid into some other fund or used for purposes other than those provided in 644800.30.
4. Any funds that are required to be legally restricted for specific purposes.

800644.030. USES OF THE FUND. The “Public Works Reserve Funds” shall be used for the following capital improvements:

A. Specific capital improvements or type of capital improvement designated by the ordinance establishing the fund.

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B. If not so designated, the “Public Works Reserve Fund” shall be used only for capital improvements of a type for which the City of Birchwood Village is authorized to issue bonds.

C. City Council may, at the time it places any current revenue in the Public Works Reserve Fund, designate such current revenue or portion thereof for use on a specific project or type of improvement and such designation shall have the same effect as the establishment of a separate public works reserve fund for such purpose.

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D. The City Council may submit to the voters the question of using all or part of any designated funds for some other purpose than for which the funds have been designated. If a majority of votes cast on the question is in favor of such diversion, the stipulated portion of the fund may be used for the newly approved purpose.

800644.040. CAPITAL IMPROVEMENT DEFINED. A capital improvement is any purchase, repair, maintenance or replacement of equipment, land or facilities having a value of five

thousand dollars (\$5,000.00) or more and a projected useful life of five or more years. These projects are medium and large in size and are not part of operating capital.

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800611.050. The City Council shall provide for the temporary investment of money belonging to the Public Works Reserve Fund in obligations in which investment of municipal funds is authorized by M.S.A. 475.66 as amended by Laws 1965, Ch. 300.

800.060. HALL/CEDAR AVENUE PUBLIC WORKS RESERVE FUND.

A. In 1996, the City Council deposited into the Public Works Reserve Fund thirty one thousand eight hundred dollars (\$31,800) for the purpose of funding the first major repairs to Hall/Cedar Avenue (then known as County State Aid Highway 29). These funds were received from Washington County after the turn-back of the jurisdiction of County State Aid Highway 29 to the City.

B. As the city has in place a Public Improvement Financing and Assessment Ordinance (see Chapter 830), the city could finance all or a part of the costs of the Hall/Cedar Avenue improvements through an assessment. The city may use the money within the Public Works Reserve Fund to finance the costs of those improvements until the assessments have been paid off.

C. It is the intention of the city that money paid back to the city by way of assessments or other means are no longer considered designated funds, and may either be re-designated and placed back into the Public Works Reserve Fund, or may be left non-designated and placed into the Capital Projects Fund or such other account as the City Council deems necessary and proper.

810611A. CAPITAL PROJECTS FUND

810611A.10. PURPOSE. The City of Birchwood Village establishes a Capital Projects Fund for the purpose of funding capital improvements of the city. ~~Currently has a fund which was established pursuant to Minnesota Statutes 471.57, said fund is known as the Public Works Reserve Fund. The Public Works Reserve Fund was created to provide funding for capital improvements within the City of the type for which the City would be authorized to issue general obligation bonds.~~

~~Some of the money in the Public Works Reserve Fund is designated for specific purposes, and thereby cannot be used for other capital projects without first obtaining permission of the electorate of the City. It is the desire of the City Council to segregate designated and non-designated money into their respective proper accounts. The designated money will remain in the Public Works Reserve Fund. Non-designated funds will be held in the transferred to a new account to be known as the Capital Projects Fund. The designated funds will be held in separate funds as authorized in Chapter 800 of the city code.~~

810611A.20. CAPITAL IMPROVEMENT PROJECTS DEFINED. ~~A capital improvement is any purchase, repair, maintenance or replacement of equipment, land or facilities having Any a value project, approved by the City Council, that involves the expenditure of five One Thousand Dollars (\$1,000.00) or more, or that involves the purchase, repair, maintenance or replacement of anything with or a projected useful life of five (5) one (1) year or more years is a capital project. These projects are medium and large in size and are not part of operating capital.~~

810611A.30. LIMITATION OF USES OF THE FUNDS. The funds which have been placed within the Capital Projects Fund shall be used, at the discretion of the City Council, for capital improvement projects. The City Council shall also, at its discretion, be authorized to transfer money out of the Capital Projects Fund to such other City fund or funds as the City Council deems necessary and proper.

611A.40. DELINEATION OF EXISTING FUNDS. ~~As of October 30, 1996, City records show that the Public Works Reserve Fund has a balance of One Hundred Three Thousand Three Hundred Forty Seven Dollars (\$103,347.00). A check of records indicates that, of the money in the Public Works Reserve Fund, Thirty One Thousand Eight Hundred Dollars (\$31,800.00) are designated funds. These funds were received from Washington County after the turn-back of County State Aid Highway 29 with the stipulated designation that it be used for the first major repair on that road. So far, none of that money has been used. Accordingly City Staff is hereby ordered and directed to establish a Capital Projects Fund pursuant to the terms and conditions of this Ordinance. Said Fund is to be established with all of the proceeds of the Public Works Reserve Fund with the exception of Thirty One Thousand Eight Hundred Dollars (\$31,800.00), which shall remain in the Public Works Reserve Fund.~~

810611.450. FUTURE FUNDING OF CAPITAL PROJECTS FUND.

There shall be accumulated in such Capital Projects Fund:

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1. The proceeds of any taxes levied for its support.

2. Fund earnings.

3. Such other revenues as may be directed by the City Council to be placed in the fund and are not required by statute to be paid into some other fund or used for some other purposes.

~~1. The City Council may place additional funds within the Capital Projects Fund from time to time as the City, in its sole discretion, deems necessary and proper.~~

~~2. The City may, in the future, conduct improvements to the former County State Aid Highway 29. As the City has in place a Public Improvement Financing and Assessment Ordinance (see Chapter 612), it is likely that the City would also assess all or a part of the costs of said improvements. Nonetheless, the City may use the money within the public Works Reserve Fund in order to finance the costs of those improvements until the assessments have been paid off. It is the intention of the City that money paid back to the City by way of assessments or other means are no longer considered designated funds, and may either be re-designated and placed back into the Public Works Reserve Fund, or may be left non-designated and placed into either the Capital Projects Fund or such other account as the City Council deems necessary and proper.~~

~~810611A.650. CONSTITUTIONALITY. If any portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.~~

~~810611A.760. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication according to law.~~

~~WHEREUPON, this Ordinance was declared passed and adopted by the City Council of the City of Birchwood Village, Washington County, Minnesota, this 11th day of March, 1997.~~

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618 PARK SPECIAL REVENUE FUND

618.010. PURPOSE. Pursuant to M.S. ##### the City of Birchwood Village establishes a Parks Special Revenue Fund for the purpose of providing funding for improvements to the city parks and park facilities.

618.020. REVENUES. There shall be accumulated in such "Park Special Revenue Fund" the following revenues:

1. The dock fees
2. The boat slip permit fees
3. Boat lift storage permit
4. Such other revenues as may be directed by the City Council to be placed in the fund.

618.030. DEFINITIONS.

618.031. PARK IMPROVEMENTS. Park improvements include acquisition, development, maintenance, and enhancements of city park lands and facilities.

618.032. CITY PARK SYSTEM. The city park system includes the following:

1. Four dedicated municipal parks (Tighe-Schmidt, Bloomquist Field, Wildwood Avenue Boulevard and Nordling Park);
2. Six lake easements providing access to White Bear Lake (Kay, Dellwood, Elm, Birch, Ash and Kurt Feistner Memorial Preserve);
3. Several undeveloped areas of open space (Lakewood Rearrangement, Out Lot A, Hall's Marsh, and Birchwood City Hall);
4. Existing trails (Ash and Grotto Street walkways); and
5. Unimproved street right-of-ways which offer potential pedestrian trails (Birch, Ash, Grotto, Highwood).

618.040. USE OF FUNDS.

618.041. The funds which have been placed within the Park Special Revenue Fund shall be used, at the discretion of the City Council, for park improvement projects within the city park system in accordance with the definitions in section 618.030 and for the following purposes:

1. Acquisition of land or physical structures for use in the city park system.
2. Development of facilities within the city park system including such things as recreational facilities; access roads; parking lots; boundary fencing, signage; utilities; and restrooms.

3. Maintenance of existing facilities including such things as preventing the deterioration of existing structures; removal of structures not useful to park function, dangerous land forms, or attractive nuisances; and stabilizing or rehabilitating natural resources.
4. Enhancements of existing facilities including capital expenditures that increase the value, improve the usability, and extend the useful life of a facility.

618.042. The City Council may designate the fund proceeds or any portion thereof for use on a specific project or type of improvement and such designation shall have the same effect as the establishment of a separate fund for such purpose.

618.043. The funds in the Park Special Revenue Fund shall not be used to purchase equipment for or fund the general operating costs of the city park system. General operating costs include such things as utility bills, routine grounds maintenance such as lawn mowing, snow removal, wages and benefits of park employees, etc.

618.044. The City Council shall, at its discretion, be authorized to transfer money out of the Park Special Revenue Fund to such other city fund of funds as it deems necessary and proper.

618.050. INVESTMENT OF FUNDS. The City Council shall provide for the temporary investment of funds belonging to the Park Special Revenue Fund in obligations in which investment of municipal funds is authorized by Minnesota Laws and Statutes.