

TITLE 12
FRANCHISES AND COMMUNICATIONS SYSTEMS

CHAPTER 1201 ELECTRICAL FRANCHISE

SECTION:

1201.01: Grant of Franchise

1201.01: GRANT OF FRANCHISE:

It is hereby adopted for the purpose of granting a nonexclusive electrical franchise to Northern States Power Company, a Minnesota corporation, that certain document entitled:
AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF ROSEVILLE, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.

Which document, together with amendments, not less than three (3) copies of which have been and are now filed in the office of the City Manager, is hereby adopted and incorporated as fully as if set out at length herein, and the provisions thereof shall be controlling. (Ord. 820, 5-22-1978; amd. 1995 Code; Ord. 1210, 8-24-1998)

CHAPTER 1202 GAS FRANCHISE

SECTION:

1202.01: Grant of Franchise

1202.01: GRANT OF FRANCHISE:

It is hereby adopted for the purpose of granting a nonexclusive gas franchise to Northern States Power Company, a Minnesota corporation, that certain document entitled:

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF ROSEVILLE, MINNESOTA, A GAS DISTRIBUTION SYSTEM INCLUDING THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TRANSMITTING GAS INTO AND THROUGH THE CITY, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF THE CITY FOR SUCH PURPOSES.

Which document, together with amendments, not less than three (3) copies of which have been and are now filed in the office of the City Manager, is hereby adopted and incorporated as fully as if set out at length herein, and the provisions thereof shall be controlling. (Ord. 820, 5-22-1978; amd. 1995 Code; Ord. 1211, 8-24-1998)

CHAPTER 1203

CABLE COMMUNICATIONS FRANCHISE

SECTION:

1203.01: Grant of Franchise

1203.01: GRANT OF FRANCHISE:

It is adopted for the purpose of granting a nonexclusive cable communication system franchise to Mediaone North Central Communications Corporation, a Minnesota corporation, that certain document entitled:

AN ORDINANCE GRANTING A FRANCHISE TO MEDIAONE NORTH CENTRAL COMMUNICATIONS CORP. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF ROSEVILLE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY IN CONJUNCTION WITH THE CITY'S RIGHT-OF-WAY ORDINANCE, IF ANY, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

Which document, together with amendments, not less than three (3) copies of which have been and are now filed in the office of the City Manager, is hereby adopted and incorporated as fully as if set out at length herein, and the provisions thereof shall be controlling. (Ord. 911, 9-27-1983; amd. Ord. 943, 3-12-1984; Ord. 1087, 1-14-1991; 1995 Code; Ord. 1208, 8-10-1998) (Ord. 1472, 11-10-2014)

CHAPTER 1204
WIRELESS COMMUNICATIONS SYSTEM FRANCHISE

(Rep. by Ord. 1189, 10-27-1997)

CHAPTER 1205
WIRELESS COMMUNICATIONS SYSTEM PERMIT

(Rep. by Ord. 1189, 10-27-1997)

CHAPTER 1206

PRIVATE COMMUNICATIONS SYSTEM

SECTION:

- 1206.01: Short Title
- 1206.02: Definitions
- 1206.03: Requirements for Permits and Fees within the Right-of-Ways
- 1206.04: Terms
- 1206.05: Conditions
- 1206.06: Right-of-Way Access
- 1206.07: Occupational License Requirement
- 1206.08: Sale or Transfer of Permittee's System
- 1206.09: Existing Systems

1206.01: SHORT TITLE:

This Chapter shall be known and may be cited as the *PRIVATE COMMUNICATIONS SYSTEM ORDINANCE*. (Ord. 1149, 9-12-94)

1206.02: DEFINITIONS:

For the purpose of this Chapter and any permit in accordance herewith, the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise specifically provided in this Article, unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of the City Council. Words not defined shall be given their common and ordinary meaning:

CABLE SYSTEM: A non-broadcast facility consisting of a set of closed transmission paths with associated signal generation, reception and control equipment, under common ownership and control, which distributes or is designed to distribute to owners, users or subscribers, the signals of one or more television broadcast stations and other subscriber services with an existing franchise issued by the City.

EASEMENTS: Any strip of land created by a subdivider for public utilities, sanitation, or other specified uses having limitations, the title to which shall remain in the name of the property owner, subject to the right-of-way use designated in the reservation constructed within the easement without written permit from the City.

ENGINEERING DEPARTMENT: The Engineering Department of the City.

FCC: The Federal Communications Commission or its legally appointed successor.

LOCAL ACCESS TRANSPORT AREA (LATA): The geographic area and communications system in which the City is located and in which the franchised local exchange carrier or any subsequent telephone company is authorized by the Public Service Commission to provide local exchange access telecommunications services.

LOCAL TELEPHONE SERVICE: The access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system; or any facility or service provided in connection with a service described above.

The term local telephone service does not include any service which is a toll telephone

service; private communication service; cellular mobile telephone or telecommunication service; specialized mobile telephone or telecommunication service; specialized mobile radio, or pagers and paging service, including but not limited to beepers and any other form of mobile and portable one-way or two-way communication; or telephone typewriter or computer exchange service.

PERMITTEE: The person who is issued a telecommunication permit or permits in accordance with the provisions of this Chapter for the erection, construction, reconstruction, operation, dismantling, testing, use, maintenance, repairing, rebuilding or replacing of a private communications system in the City.

PRIVATE COMMUNICATIONS SYSTEM: Any system of communication lines, cables, equipment or facilities, which are used to provide a telephone, video, data, telemetry, intercom or telecommunications service, that in any manner occupies easements, streets, public ways or public places within the corporate limits of the City, as now or in the future may exist. Private communications system does not include any part of a State or municipally franchised local exchange or telephone system franchised by the City or any part of a Federal, State, county or local government owned communications system.

S.M.S.A.: Minneapolis/St. Paul Standard Metropolitan Statistical Area.

STREET: Any area established for vehicular or public access use of the entire width between the property lines of every way publicly maintained when any part thereof is open for public purposes. Street includes, but is not limited to, highway, avenue, road, alley, right of way, lane, boulevard, concourse, bridge, tunnel, parks, parkways and waterways.

TELECOMMUNICATIONS PERMIT: The privilege granted by the City by which the City authorizes a person to erect, construct, reconstruct, operate, dismantle, test, use, maintain, repair, rebuild or replace a private communications system that occupies the streets, public ways or public places within the City. Any telecommunication permit issued in accordance herewith shall be a nonexclusive permit.

TOLL TELEPHONE SERVICE: A telephonic quality communication for which there is a toll charge which varies in amount with the distance and elapsed transmission time or each individual communication; or a service which entitles the subscriber or user, upon the payment of a periodic charge which is determined as a flat amount or upon the basis of total elapsed transmission time, to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

TOTAL GROSS REVENUES: All cash, credits, or property of any kind or nature reported as revenue items to permittee's audited income statements or the income statements of any affiliate or subsidiary, arising from or attributable to the sale or exchange of communication services provided by the permittee within the City in any way derived from the operation of its private communications system, including, but not limited to, any interconnection between its system in the City and any system whatsoever. This sum shall be the basis for computing the fee imposed pursuant to subsection 1206.03B5. Such sum shall not include any bad debts, deposits, promotional or vendor discounts or credits, nor sales, service, occupational or other excise tax to the extent such taxes are charged separately from normal service charges and are remitted by the permittee directly to the taxing authority. (Ord. 1149, 9-12-94)

1206.03: REQUIREMENTS FOR PERMITS AND FEES WITHIN THE RIGHT-OF-WAYS:

- A. Permit Requirement: No person or firm whether public, private, nonprofit or not for profit shall construct, operate or continue to operate a private communications system which occupies the streets, public ways and public places within the City without

having been issued a telecommunications permit by the City or a franchise for telephone, telecommunications service, video distribution system or cable television or cable communications system by the City.

1. Exemption: This subsection A shall not apply to an operator of a wireless telecommunications system who has a valid lease agreement with the City to pay rent and/or other consideration to the City for use of City land to construct and/or operate such a system, unless such lease agreement specifically states that this subsection A shall apply. (Ord. 1155, 11-29-94)

B. Compensation Requirements: Except as hereafter provided, it shall be a term and condition of any telecommunication permit issued in accordance herewith as a part of the consideration supporting the issuance of such telecommunication permit and the City's permission thereby to occupy and use the streets of the City, that the permittee shall pay each year to the City compensation and license fees as follows:

1. Permit Request Fee: All applicants shall pay a permit request fee of three hundred dollars (\$300.00).

2. Long Distance Service: For providers of long distance access or long distance service, other than the franchised local exchange carrier, a minimum fee of five hundred dollars (\$500.00) per year per cable or five hundred dollars (\$500.00) per year per cable per linear mile or any portion thereof for systems extending over one mile, whichever is greater or the maximum allowed by law plus the fees set forth subsection B (5).

3. Nonfranchise Entity: For private communications systems owned by a nonfranchised entity, a minimum of five hundred dollars (\$500.00) per year or five hundred dollars (\$500.00) per linear mile, or any part thereof for systems extending over one mile. In no case shall the annual fee be less than five hundred dollars (\$500.00.)

4. Separate Permit Required:

a. Lines, cables or fiber optic cables of a private communications system, placed in a conduit or duct bank owned by another permittee or franchisee of the City shall require a separate telecommunication application and permit, subject to the same requirements as other installations, except the fee for the additional telecommunications permit shall be one-half (1/2) the maximum allowed by law or one-half (1/2) of the otherwise applicable per linear mile fee for the portion of the pathway so utilized.

b. Lines, cables or fiber optics of a private communication system which are placed in a conduit or duct-bank owned by an entity not exempt by law or statute from the provisions of this article shall require a telecommunication permit, unless the franchise, or other authorization by which the exempt entity has the right to place the conduit or duct-bank within the City right of way prohibits the application of the permit and fee requirements contained in this Chapter to the lessee of space within the conduit or duct-bank.

5. Gross Revenue Fee: Any private communication system that serves customers and charges a fee for services provided by the private communications system within the City right of way shall pay in addition to applicable fees in (subsections A through D) quarterly, five percent (5%) of the total gross revenues from such customers to be calculated on the basis of all revenues derived from transmissions that bypass the local exchange carrier. Revenues derived from transmissions that enter a private communications system through the LATA shall not be part of the compensation and permit fees. The City may, at its option, adjust this permit fee each year or by an amount not exceeding the proportional cumulative increase in the Consumer Price Index published by the United States Department of Labor for Urban Wage Earners (1967=100%), since the initial establishment of this permit fee or since the most recent increase in the permit fee for any and all subsequent increases after the first increase,

and only after a public hearing and at least twenty (20) days' notice to all permittees, except as hereinafter provided. The City may raise the permit fee more than the cumulative increase in the Consumer Price Index in the event there is competent evidence that the fee imposed by the City is below the norm of fees imposed by other cities within the S.M.S.A.

- C. Payment offers: The annual compensation and permit fee provided for in subsection B above shall be payable annually on or before October 1 of each calendar year for the portion of the private communications system within the City's right of way on January 1 of that year and a prorated permit fee, based upon the calendar quarter in which the application is filed, shall be paid at the time of the application for a telecommunication permit for all new portions of the system. Quarterly revenue fees are due January 1, April 1, July 1 and October 1.
- D. Late Payment Penalty: Fees not paid within ten (10) days after the due date shall bear interest at the rate of one percent (1%) per month from the date due until paid.
- E. Acceptance of Payment: The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable.
- F. Audit of Payments: All fee payments shall be subject to audit by the City and assessment or refund if the payment is found to be in error. In the event that such audit results in an assessment and an additional payment to the City, such additional payment shall, at the City's option, be subject to interest at the rate of one percent (1%) per month retroactive to the date such payment originally should have been paid, which shall be due and payable immediately.
- G. Federal, State and Local Tax Liability: Nothing in this Chapter shall be construed to limit the liability of the permittee for all applicable Federal, State and local taxes.
- H. Utility Notification Requirement: Any holder of a telecommunications permit must be a member of a utility notification center or any subsequent alert and warning system to protect and locate their underground lines and cable. (Ord. 1149, 9-12-94)

1206.04: TERMS:

- A. Any telecommunication permit issued by the City in accordance herewith shall be a nonexclusive permit for the use of the easements, streets, public ways or public places within the City as specified in the telecommunication permit for the erection, construction, reconstruction, operation, maintenance, dismantling, testing and use of a private communications system.
- B. Any telecommunication permit issued by the City shall continue in full force and effect so long as the permittee is in compliance with this Chapter, all applicable Federal, State and local ordinances and regulations and the space occupied is not needed for a public purpose.
- C. In the event any telecommunication permit shall be revoked, the applicable private communications system shall, at the option of the City be removed from the streets, public ways and public places at the sole expense of the permittee. (Ord. 1149, 9-12-94)

1206.05: CONDITIONS:

- A. Any telecommunication permit issued for a private communications system in accordance herewith shall apply only to the location or locations stated on the telecommunication permit or permits. Each permit shall clearly state the location of each end and leg of the private communications system and specify the total length and be certified by a registered survey company.

- B. Nothing in this Chapter shall be construed as a representation, promise or guarantee by the City that any other permit or other authorization required under the City Code for the construction or installation of a private communication system shall be issued. The requirements for any and all other permits as may be required by any City ordinance shall still apply and all other applicable permit fees shall still be due. (Ord. 1149, 9-12-94)

1206.06: RIGHT-OF-WAY ACCESS:

- A. All Other Permits Required: Before commencing construction of its private communications system in, above, over, under, across, through or in any way connected with the streets, public ways or public places of the City, the permittee shall first obtain the written approval of, and all other necessary permits from, all appropriate City agencies, including, but not limited to, the Zoning Department and Department of Public Works. Application for such approval shall be made in the form prescribed by the Engineering Department.
- B. Notice Before Construction: Upon obtaining such written approval, the permittee shall give the Engineering Department and any other appropriate agency written notice within a reasonable time of proposed construction, but in no event shall such notice be given less than ten (10) days before such commencement, except for emergency repairs of existing lines or cables.
- C. Use of Existing Poles:
1. Any person who submits a request for a permit in accordance herewith shall include therein proposed agreements for the use of existing utility poles and conduits, if applicable, with the owner(s) of such facilities to be used or affected by the construction of the proposed private communications system. These agreements shall become effective on the date of execution of the permit issued in accordance herewith in the event that such person is issued a permit.
 2. In the event that permission to use existing poles or conduits cannot be obtained, the permittee shall submit documentation to support the unavailability of existing poles and a detailed plan for construction ensuring protection for existing facilities.
 3. Nothing in this Chapter or any permit issued in accordance herewith, shall be construed as authorizing the permittee to erect and maintain new poles in areas serviced by existing poles, if the poles are available for the permittee's use. The permittee shall obtain written approval from the Engineering Department and other appropriate City agencies before erecting any new poles or installation of any underground conduits where none exist.
- D. Surface Disturbance Requirement: It shall be unlawful for the permittee or any other person to open or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without obtaining approval to do so after proceeding in the manner prescribed in subsections A and B hereof.
- E. Street and Sidewalk Restoration: The permittee shall restore any street or sidewalk it has disturbed in accordance with the provisions of the City standard specifications for streets and sidewalks, and shall, at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities to as good as the condition such property was immediately prior to the disturbance, damage or injury or pay the fair market value of such property to its owner or shall make such other repairs or restorations as outlined in the approved permit. The permittee shall warrant all repairs to paved streets and sidewalks for a period of five (5) years.
- F. Temporary Removal of System Components: The permittee shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same street or other

public place or remove from such street or other public place any of its property when required to do so by the City because of street or other public excavation, construction, repair, regrading or grading, traffic conditions, installation of sewers, drains, water pipes, City owned power or signal lines, tracts, vacation or relocation of streets or any other type of structure or improvement of a public agency, or any type of improvement necessary for the public health, safety or welfare or upon termination of expiration of the permit.

- G. System Maintenance Requirement: The permittee shall maintain all wires, conduits, cables, and other real and personal property and facilities in good condition, order and repair. The permittee shall provide indemnity insurance and performance bonds or demonstrate financial responsibility as required and shall comply with all rules and regulations issued by the Engineering Department governing the construction and installation of private communications systems.
- H. Permittee Record Requirements: The permittee shall keep accurate, complete and current maps and records of its system and facilities which occupy the streets, public ways and public places within the City and shall furnish, as soon as they are available two (2) complete copies of such maps and records, including as-built drawings with horizontal and vertical dimensions, to the Engineering Department.
- I. Other Rules and Regulations: The permittee shall comply with all rules and regulations issued by the Engineering Department governing the construction and installation of private communications systems. (Ord. 1149, 9-12-94)

1206.07: OCCUPATIONAL LICENSE REQUIREMENT:

Any person who shall carry on or conduct any business or occupation or profession for which a license or tax is required by the City without first obtaining a license or paying such tax shall be considered to be in violation of this City Code and upon conviction, be punished as provided by the City Code. (Ord. 1149, 9-12-94)

1206.08: SALE OR TRANSFER OF PERMITTEE'S SYSTEM:

The permittee shall not transfer or assign its interest in any permit issued in accordance herewith, other than a general assignment of the permittee's entire assets or a pledge of the assets as collateral on a loan, without the prior written authorization of the City. For purposes of this Section, a merger or consolidation of the permittee with another company shall not be deemed a transfer or assignment. The assignment of the right to a nonaffiliated company to place a line, cable or fiber optic cable within a permitted conduit or ductbank of a permittee is subject to the requirement of an additional telecommunication permit and the applicable fees. (Ord. 1149, 9-12-94)

1206.09: EXISTING SYSTEMS:

- A. Lines or cables of private communication systems which had been constructed or placed within the City streets, public ways or public places prior to the date of enactment of this Chapter were permitted to be there only by virtue of a revocable license. Such lines and cables may remain within the City streets, public ways or public places provided the private communications systems owners comply with the provisions of this Chapter as they relate to the existing lines and cables. (Ord. 1149, 9-12-94)
- B. Except as hereinafter provided, the provisions of this Chapter shall become effective as to preexisting private communications systems on January 1, 1996. The private communications systems companies or owners which have facilities within the City streets on the date of enactment of this Chapter shall have until January 1, 1996, to obtain permits for their existing system, to pay the applicable fee prorated as of January

1, 1996, and to fully comply with the provisions of this Chapter.

- C. The applicable fee for lines, cables, and fiber optics which were existing within the City streets, public ways and public places on January 1, 1995, shall be prorated over a two (2) year transitional period. The fee for the first calendar year applicable to the existing lines and cables shall be fifty percent (50%) of what otherwise would be due in accordance with the terms of this Chapter. The fee for the second year shall be seventy five percent (75%) of the actual amount and one hundred percent (100%) beginning year three (3). (Ord. 1149, 9-12-94)

CHAPTER 1207
NON EXCLUSIVE TRANSIT STOP SHELTER FRANCHISE

SECTION:

- 1207.01: Statutory Authority
- 1207.02: Rights and Privileges of Franchisees
- 1207.03: Scope of Franchise
- 1207.04: Term-Renewal
- 1207.05: Commencement of Term
- 1207.06: Area
- 1207.07: Police Powers
- 1207.08: Other Franchises
- 1207.09: Notices
- 1207.10: Basic Service Installation Schedule & Design
- 1207.11: Maintenance
- 1207.12: Advertising
- 1207.13: Locations
- 1207.14: Alteration of Services
- 1207.15: Fee for Franchise-Minimum Fee
- 1207.16: Accounts and Records
- 1207.17: Insurance and Security
- 1207.18: Indemnification
- 1207.19: City Responsibilities
- 1207.20: Reserved
- 1207.21: Assignment or Transfer
- 1207.22: Performance Bond or Optional Letter of Credit
- 1207.23: Removal of Shelter
- 1207.24: Public Works to Regulate Installation
- 1207.25: Forfeiture
- 1207.26: Disposition of Shelters on Expiration of Franchise
- 1207.27: Nondiscrimination
- 1207.28: Severability
- 1207.29: Incorporation into Roseville City Code

Purpose:

The City desires to implement a program (the “Transit Shelter Program”) pursuant to which illuminated transit shelters will be installed and maintained in compliance with this Franchise Ordinance at certain transit stop sites to be identified from time to time by the City, Transit Authority, and franchisees. The City desires to engage the services of franchisees with respect to the Transit Shelter Program upon the terms, covenants and conditions hereinafter set forth.

1207.01: STATUTORY AUTHORITY:

Acting pursuant to the authority granted to the City of Roseville by the Minnesota State Legislature pursuant to Minnesota Statutes, Section 160.27, Subdivision 2, the Council of the City of Roseville does hereby adopt a nonexclusive transit stop shelter franchise procedure subject to all the terms and conditions set forth in this franchise ordinance.

1207.02: RIGHTS AND PRIVILEGES OF FRANCHISEES:

Any franchise granted by the City under this Ordinance shall grant to the franchisee the right to install, repair, and maintain transit shelters with affixed advertising, at active transit stop sites within the City of Roseville, on any street, and county road and state highway right-of-way with proper permits, at the franchisee's sole cost and expense for the convenience and comfort of persons waiting for transit. The transit shelters and advertising displayed thereon shall be subject to the limits and conditions set forth in this franchise ordinance as may be amended from time to time by the City.

1207.03: SCOPE OF FRANCHISE:

Upon adoption of an ordinance granting a franchise to a particular franchisee and execution of the acceptance thereof by the franchisee, the franchisee shall be bound by all the terms and conditions contained herein. The franchisee shall also provide all services set forth in its application and by its acceptance of the franchise. In the event of a conflict between the application made by the franchisee and the provisions of this ordinance, that provision which provides the greatest benefit to the City in the opinion of the City Council shall prevail.

1207.04: TERM-RENEWAL:

The franchise shall remain in full force and effect for an initial period as specified by the grant of the franchise. The initial period shall not exceed ten (10) years; provided, however, that the City may revoke the franchisee's right to use or occupy any portion of any street, alley, right-of-way or other City property. The franchisee may be granted by the City the option to extend the franchise on such terms and conditions as may be mutually acceptable to the City and the franchisee, for up to two (2) additional terms. Each additional term shall be one-half the length of the initial term. The franchisee may exercise each extension option by providing written notice of such exercise to the City within sixty (60) days prior to the end of the then current term of the franchise. Notwithstanding the foregoing, the franchisee shall not have the right to exercise an extension option while an uncured default by it exists with respect to this ordinance.

1207.05: COMMENCEMENT OF TERM:

The franchise term shall commence with the effective date of the ordinance granting a specific franchise; provided, that the franchisee has filed within thirty (30) days after publication of this ordinance a written acceptance hereof with the City Manager in such form as the City Attorney may approve; and provided, that a bond or letter of credit as specified in Section 22 hereof and the evidence of comprehensive liability insurance, which are required by this ordinance, shall have been approved and have been filed with the City Manager within ninety (90) days after the grant of the franchise.

1207.06: AREA:

A franchise is granted for the area of the City of Roseville, as it exists and as its borders may from time to time be changed, as is specified in the franchisee's proposal and the ordinance granting the specific franchise.

1207.07: POLICE POWERS:

In accepting a franchise, the franchisee acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

1207.08: OTHER FRANCHISES:

Transit stop shelters with advertising displayed thereon shall only be allowed to occupy or use a right-of-way of any street or highway within the City of Roseville with and under the terms of a franchise as granted to a particular franchisee. This shall apply to shelters constructed by Metro Transit only if the Council specifically determined to make this ordinance applicable to Metro Transit. The City may grant franchises to multiple persons during the term of this franchise, subject to the provisions of this ordinance regarding number and placements of such shelters, and locations as identified in the ordinance granting the franchise. (Ord. 1318, 04-11-2005)

1207.09: NOTICES:

All notices from the franchisee to the City as required by this franchise ordinance shall be to the Director of the Department of Public Works unless otherwise stated herein. The franchisee shall maintain throughout the term of the franchise a local office and address for service of notices by mail. The franchisee shall also maintain with the City a local office and telephone number for the conduct of matters related to this franchise open during normal business hours. The franchisee will provide an emergency phone number for response after normal business hours. (Ord. 1318, 04-11-2005)

1207.10: BASIC SERVICE, INSTALLATION SCHEDULE & DESIGN:

Franchisees shall furnish, install, repair and maintain safe, clean and attractive illuminated transit shelters with revenue generating advertisements. In connection therewith, franchisees shall provide all materials, supplies, equipment, services and personnel at their sole cost and expense without any cost or expense to the City. All transit shelters shall: (i) be installed within one hundred eighty (180) days of the City's issuance of the applicable permits and licenses, (ii) contain inside lighting to illuminate the inner area of each shelter from dusk to dawn; and (iii) be equipped with a minimum of one bench and one trash receptacle to be emptied on a regular basis by the franchisee. The design of the transit shelters and site plan with improvements therein shall be submitted to and approved by the Public Works Director. The maximum size of a shelter shall be ten (10) feet in height, fourteen (14) feet in length, and five (5) feet in width erected upon a concrete pad of a size approved by the Public Works Director. The length of a shelter shall be determined by the Public Works Director and shall be dependent upon the number of buses or vehicles and users that frequent the bus stop. The franchisee shall meet all local, state and federal requirements applicable to bus shelters, their placement, and their use for public transit services. (Ord. 1318, 04-11-2005)

1207.11: MAINTENANCE:

Franchisees shall maintain all shelters to the reasonable satisfaction of the Director of Public Works as set out below. The transit shelters shall be maintained a minimum of once a week or more frequently and on an as needed basis based on specific site needs at the discretion of the Director of Public Works with such maintenance to include sweeping, cleaning,

emptying trash receptacles, picking-up litter/debris about the shelter, removing graffiti/stickers, removal of ice and snow from sidewalks constructed by the Franchisee leading to public sidewalks in a manner such that each shelter shall be fully accessible within 12 hours of a snow fall or other weather event. Franchisees shall power-wash the shelters and sidewalks at least once each month, weather permitting.

Franchisees shall inspect each shelter a minimum of once a week, or more frequently and on an as needed basis, based on specific site needs for any damaged or broken parts or burned-out lighting fixtures and franchisees shall repair or replace damaged or broken parts and burned-out lighting fixtures within forty-eight (48) hours after they become aware of the damage, breakage, or burn-out, or at the time of weekly maintenance, whichever is sooner. (Ord. 1318, 04-11-2005)

1207.12: ADVERTISING:

Each transit shelter installed by franchisees shall contain panels for advertising displays as specified in the franchisee's proposal and ordinance granting the particular franchise. Such displays shall be used solely for advertising materials and/or public service announcements. Franchisees shall use their best reasonable efforts to obtain revenue-generating advertisements for the advertising display panels, except where unsold advertising panels shall be available for City use on a space-available basis, and the City will provide the posters to the Franchisee for posting in the shelters.

Advertising size and placement shall be as follows: The shelter signage may be up to two (2) four (4) feet by six (6) feet advertising panels in a 2-sided display affixed to the end wall of the shelter (or parallel to the road on a narrow right of way application) and perpendicular to the roadway curb or edge viewable from one or both ends of the shelter. Signage on shelters shall require permits as required by Chapter 703.05 of this code. (Ord.1349, 5-21-2007)

Except with respect to the quarterly fee payable to the City pursuant to Section 15 hereof, franchisees shall have the right to retain all revenues generated from the advertising displays on all transit shelters. Under no circumstances shall any advertising display contain indecent or vulgar pictures, graphics or language or include advertising for any alcohol or tobacco products. Franchisees shall not display advertising relating to contraception, pornography, politics or religion. Franchisees shall remove within forty-eight (48) hours after their receipt of the City's written notification requesting such removal, any advertisements which the City in its reasonable discretion deems to be offensive to the Community, or in conflict with the City's health, safety and welfare concerns. In the event that a franchisee fails to remove such advertisements within such forty-eight (48) hour period, the City may remove the materials at the franchisee's sole cost and expense. (Ord. 1318, 04-11-2005)

1207.13: LOCATIONS:

Location of Transit Shelters: A franchisee shall erect transit shelters at those locations that are mutually agreed upon by the City and the franchisee, but only after a permit is approved by the Public Works Director. The Public Works Director shall determine the location of shelters based on need, and so as to assure that shelters do not unnecessarily impede pedestrian traffic, or line of sight and traffic safety. All transit shelters shall be erected on public rights-of-way, or private property with written authorization from the property owner(s), and shall be subject to all rules, regulations and ordinances governing the use of such rights-of-way. Prior to erecting any such shelters at any locations, the franchisee shall

secure any necessary approval and/or zoning variance that may be required from any governmental entity. The Public Works and Transportation Commission will review site applications of the franchisee and hold a hearing for public input regarding proposed locations.

1207.14: ALTERATION OF SERVICES:

In the event that the City desires at any time to alter or change the nature or character of the services to be provided by the franchisee and such alteration or change materially increases the costs and expenses to be incurred by the franchisee or materially reduces the advertising revenues that can be generated by the franchisee, such alterations or changes shall not be effective until the City and the franchisee have mutually agreed to and executed an amendment to this Franchise Ordinance, which amendment may include an adjustment to the City's fee under Section 15 hereof.

1207.15: FEE FOR FRANCHISE-MINIMUM FEE:

In consideration of the award of the franchise by the City, franchisees shall pay the City a fee based upon the annual gross revenue collected that the franchisee derives from advertising on shelters located within the City in accordance with the terms of the ordinance granting the franchise and as follows:

Payments and a quarterly report on operations and revenue shall be made thirty (30) days after the close of each quarter of the year. The "gross revenue" as used in this ordinance shall mean all advertising revenue derived directly or indirectly by the franchisee, its affiliates, subsidiaries, a parent company or corporation or any person in which the franchisee has a financial interest, from or in connection with the operation of the franchise prior to any deduction; provided, however, that this shall not include any taxes on services furnished by the franchisee herein imposed directly upon any advertiser by the City, state or other governmental unit and collected by the franchisee on behalf of said governmental unit.

1207.16: ACCOUNTS & RECORDS:

A franchisee shall keep books of accounts and records of all transactions and costs incurred in connection with the purchase, manufacture and installation of the shelters and advertising on shelters, showing all financial transactions including receipts and disbursements and the particulars thereof in a form satisfactory to the City of Roseville Finance Director. Such books and records shall be available to the City for inspection any time during normal business hours upon forty-eight (48) hours prior written notice thereof to the franchisee. All such books and records shall be retained by the franchisee for a minimum of five (5) years.

Franchisees shall file annually with the City no later than one hundred twenty (120) days after the end of the franchisee's fiscal year, a copy of a financial report applicable to the Roseville Transit Shelter System, including an income statement relating to its operations during the fiscal year and a balance sheet, both of which shall be certified as correct by an independent certified public accountant, and a statement of its properties, equipment and facilities which are located upon the streets, highways and public places within the City giving its investment in such facilities on the basis of original cost, less applicable depreciation. These reports shall be certified as correct by an authorized officer of the franchisee and shall be submitted along with such other reasonable information as the City shall request with respect to the franchisee's facilities and expenses related to its transit stop shelter system operations within the City.

Franchisees shall also file with the City Manager copies of their articles of incorporation, bylaws, agreements with any other person relating to the ownership of the transit stop shelter system, and amendments of such documents as they become effective.

1207.17: INSURANCE AND SECURITY:

Franchisees shall procure and maintain at their own cost the following insurance coverage:

- a) Workers compensation insurance in accordance with the Minnesota Workmen's Compensation Act.
- b) Commercial general liability insurance with minimum limits of \$150,000 per person and \$1,000,000 per occurrence.
- c) Comprehensive automobile liability insurance with minimum limits for bodily injury and property damage of \$150,000 per person and \$1,000,000 per occurrence.

The foregoing insurance coverage shall be procured and maintained with insurers that are reasonably acceptable to the City. The liability insurance policies shall be endorsed to include the City as an additional insured. If the above limits are less than those specified in Minn. Stat. Ch. 466 as the liability limits of a municipality, the higher limits shall apply.

The policy shall be of type in which coverage is restored immediately after the occurrence of any loss or accident from which liability may thereafter accrue. The policy shall contain an endorsement which shall provide that no cancellation shall become effective without thirty (30) days' prior written notice to the City of intent to cancel or not to renew. In the event such insurance is cancelled and the franchisee shall fail to immediately replace it with another equivalent policy, the City may terminate their franchise and declare it to be forfeited.

1207.18: INDEMNIFICATION:

Franchisees shall defend, indemnify and hold harmless the City, its officers, agents, representatives and employees from and against all liability, claims, demands and expenses (including court costs and reasonable attorneys fees), on account of any injury, loss or damage, arising out of or in connection with construction, operation, maintenance, location, or removal of any transit stop shelter owned by franchisee. (Ord. 1318, 04-11-2005)

1207.19: CITY RESPONSIBILITIES:

The City shall provide franchisees with all available information (including the location of road right-of-way and utilities) which is relevant to the Transit Shelter Program together with the necessary guidance and direction to achieve the Program's objectives. In consideration of the City's use of the transit shelters at no cost, the City hereby assures access to and use of the nearest electrical power and waives all permit and use fees for each transit shelter covered by this Ordinance. Provided that each transit shelter complies fully with the provisions of this Ordinance and all applicable provisions of the City's Municipal Code, all necessary permits for the installation and/or maintenance of the transit shelters shall be granted by the City. The process for obtaining such permits shall be expedited by all city departments to assure that shelters are installed within one hundred eighty (180) days.

1207.20: RESERVED:

1207.21: ASSIGNMENT OR TRANSFER:

A franchisee shall not assign or transfer its rights, duties and obligations under the franchise, in whole or in part, without first obtaining the written consent of the City, provided, however, that the City's consent shall not be required with respect to any assignment by the franchisee to any person or entity that controls, is controlled by, or under common control with the franchisee or which merges with or into the franchisee or acquires substantially all of the assets of the franchisee.

1207.22: PERFORMANCE BOND OR OPTIONAL LETTER OF CREDIT:

A franchisee shall post with the City a performance bond guaranteeing its performance of the obligations of the franchise, as created by this ordinance, and the ordinance granting the particular franchise. The amount of the bond shall be as specified in the Ordinance granting the particular franchise. The bond shall be issued by a company licensed to do business in Minnesota, and shall be in a form acceptable to the City Attorney. In lieu of the performance bond the franchisee may elect to give the City an irrevocable letter of credit in the bond amount issued by a bank in the metropolitan area. The letter of credit shall provide that it may be drawn upon under the same circumstance as a surety would be subject to a claim under its performance bond, except that the letter of credit shall be subject to a draw without any previous demand upon, or notice to the franchisee. The letter of credit shall also be subject to a draw if it is effective for a limited term and is not replaced by a replacement letter of credit at least thirty (30) days before expiration. The letter of credit shall also be in a form approved by the City attorney and shall be on file with the City Manager and remain so until three hundred sixty-five (365) days after the expiration or termination of the franchise. The City shall give the Franchisee seven (7) days' notice of its intent to draw on a letter of credit.

1207.23: REMOVAL OF SHELTER:

Franchisees shall within thirty (30) days after receipt of written notice from the City remove any transit shelters that are located at discontinued transit stop sites or which the City reasonably determines are in condition of substantial disrepair or deteriorated condition such as to pose a health or safety hazard or diminution of value to the abutting properties. Additionally, franchisees shall relocate any transit shelters within thirty (30) days after their receipt of a written request to do so by the City as a result of redevelopment, traffic hazards or changes in bus routes. Any such relocation of a transit shelter shall be to a location mutually agreeable to both parties, but only after issuance of all necessary permits by the Director of Public Works.

1207.24: PUBLIC WORKS TO REGULATE INSTALLATION:

The Director of Public Works shall regulate the installation of transit shelters and if, in the opinion of the Director of Public Works, a shelter installation is hazardous, the Director may order a franchisee to take necessary steps at its own cost to remove or relocate the shelter or make the necessary repairs to correct the hazard. The Director of Public Works shall have the right to conduct reasonable inspections of shelters for this purpose.

In regulating the installation of shelters, the Director of Public Works shall regulate the size of shelters installed, its orientation or placement on the site, and any preparatory or remedial site work. When the City has approved a location plan, a franchisee shall submit detailed amended plans showing any discrepancies between the site plan approved and the work

completed.

1207.25: FORFEITURE:

- A. The City shall, in addition to any other rights it may have, have the right to declare that a franchisee has forfeited a franchise in the event of a substantial breach of its terms and conditions, including, but not limited to, the following circumstances:
- (1) If the franchisee becomes insolvent or is declared bankrupt or makes any assignment for the benefit of its creditors; and
 - (2) If the franchisee assigns or transfers or attempts to assign or transfer the franchise, or sells or leases or attempts to sell or lease any of its shelters without the Council's permission; or
 - (3) If the franchisee fails to install shelters on schedule as required by this Franchise Ordinance or the grant of the particular franchise, or fails to conform to the specifications contained in its application or the invitation for applications, or fails to construct the shelters in a workmanlike manner to the satisfaction of the Director of Public Works and in conformity with City ordinances and codes, or if the franchisee refuses or neglects when so ordered to take down, rebuild or repair any defective or unsatisfactory work or to maintain the shelter as required herein; or
 - (4) If the franchisee fails to remove any shelter when ordered to do so in accordance with this ordinance; or
 - (5) If the franchisee refuses or neglects to comply with any reasonable order of the Director of Public Works; or
 - (6) If the franchisee persists in any course of conduct in violation of any of the provisions of this ordinance; or
 - (7) If the City receives notice of intention not to renew or the franchisee fails to keep in force its insurance, required herein.
- B. The Director of Public Works may make a written demand by certified mail that a franchisee comply with any such provision, rule order or determination under or pursuant to this franchise. Such notice shall be entitled "Forfeiture and Termination Notice." If the violation by the franchisee continues for a period of thirty (30) days or more following such written demand, without having been corrected or remedied, the matter of forfeiture and termination of the franchise shall then be taken before the City Council. The City shall cause to be served upon the franchisee at least twenty (20) days prior to the date of such Council meeting a written notice of intent to terminate the franchise, including the time and place of the meeting. Public notice shall be given of the meeting and the issue which the Council is to consider. The City Council, or a committee thereof, shall hear and consider the issue and the Council shall, in its discretion, determine whether there has been a substantial breach. If the Council determines that there has been a substantial breach, the franchisee shall have such period of time as the Council may set, but not less than thirty (30) days in which to cure the substantial breach; provided, that no opportunity for cure need be given for fraud or misrepresentation or for circumstances which may immediately adversely affect the public health, safety or welfare. At the expiration of the period of time set for compliance, the Council may terminate the franchise forthwith upon finding that the franchisee has failed to cure the breach.
- C. Unless otherwise approved by the City, upon termination of this franchise, the franchisee shall remove all transit shelters and support equipment and apparatus installed by it pursuant to this Franchise Ordinance, within sixty (60) days of termination. However, the Director of Public Works may grant permission to the Franchisee to leave all or any portion of the infrastructure on terms and conditions

established by the Director. If, after ninety 90 days of the termination date, the franchisee has not removed all equipment and facilities that may be located along, over or under any street or highway within the City, the franchisee shall forfeit said improvements to the City. The performance bond or letter of credit posted in accordance with Section 22 shall remain posted to insure that the streets, highways and public places from which such equipment is removed shall be placed in good condition. (Ord. 1318, 04-11-2005)

1207.26: DISPOSITION OF SHELTERS ON EXPIRATION OF FRANCHISE:

- A. In the event that the franchise expires and is not renewed, the City may purchase the shelters and facilities then in place upon such terms and for such consideration as may be agreed to by the City and the franchisee prior to the expiration of the franchise. If prior to the expiration of the franchise or within ninety (90) days following such expiration the City elects to award a franchise to any other person or company, and the City elects to have the new franchisee operate and maintain the shelters which have been installed pursuant to this franchise, then the new franchisee shall purchase such shelters on such terms and for such consideration as may be agreed to by the new franchisee and the prior franchisee.
- B. Notwithstanding the provisions of paragraph A of this section, in the event that the term of this franchise expires and the City and franchisee have not renewed the franchised for an additional term, the franchisee shall at its own expense remove all of the shelters and facilities which it has installed or caused to be installed upon or below the public streets and highways or public places of the City and shall restore the streets and highways of the City to their former condition in a manner satisfactory in the judgment of the Director of Public Works. If the franchisee fails to remove all such shelters and facilities within ninety (90) days after the expiration of the franchise, the City may have the shelters and facilities removed and require the franchisee to pay the cost of such removal. In the event that the shelters and facilities have not been sold pursuant to paragraph A of this section or removed by the franchisee, all right and title to the shelters shall be deemed to have passed to and vested in the City. The franchisee agrees that in such circumstances it will execute such documents as the City Attorney may require to transfer the title to such shelters and facilities.

1207.27: NONDISCRIMINATION:

The franchisee, its agents, employees, contractors and subcontractors shall at all times comply with the provision of the City of Roseville Code and applicable state and federal law regarding nondiscrimination and civil rights in connection with its services provided pursuant to this Franchise Ordinance. (Ord. 1324, 08-08-2005)

1207.28: SEVERABILITY:

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

1207.29: INCORPORATION IN ROSEVILLE CITY CODE:

This Ordinance shall be deemed a part of the Roseville City Code and shall be incorporated therein as Appendix Chapter 1207.

(Ord. 1285, 07/28/03)