

## SUB-ANALYSIS

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**SEC. 2.40. COUNCIL REORGANIZATION.** At its first regular meeting in January, the Council shall, in the order herein stated and prior to commencing its regular order of business, reorganize by (1) having all new officers and officials take and subscribe their oath of office; (2) seat all new members of the Council; (3) select an acting Mayor in the absence of the Mayor; (4) appointments to standing committees of the Council which shall be submitted by the Mayor for confirmation; and, (5) perform such other organizational acts or functions as may be permitted or required.

**SEC. 2.41. COUNCIL MEETINGS.** Regular meetings shall be held at the time and place specified and agreed to by the Council.

Source: City Code  
Effective Date: 9-1-75

**SEC. 2.415. SPECIAL MEETINGS.** Special meetings of the Council may be called by the Mayor or by any three other members of the Council by writing filed with the City Administrator, stating the time, place and purpose of the meeting. Notice of a special meeting shall be given by the City Administrator to each member of the Council by mailing a copy of such filing to all members who did not sign or issue the call at least three (3) days prior to the time stated therein, or by personal service at least seventy-two (72) hours prior to the projected time of meeting. Special meetings may be held without prior written notice to the Council when all Council members are present at the meeting or consent thereto in writing. Any such consent shall be filed with the City Administrator prior to the beginning of the meeting. Any special meeting attended by all Council members shall be a valid meeting for the transaction of any business that may come before the meeting. Meetings of the Council which are adjourned from time-to-time shall not be subject to the foregoing notice requirements; nor shall special meetings which, in the judgment of the Council, require immediate consideration to meet an emergency require such notice, but may be called by telephone communication or any other expeditious means. Notice to the public and to news media shall be given as required by statute.

Source: Ordinance No. 229, 2nd Series  
Effective Date: 2-28-97

**SEC. 2.42. COUNCIL PROCEDURE AT MEETINGS.** Roberts' Rules of Order (Revised) shall govern all Council meetings as to procedural matters not set forth herein. The order of business at regular meetings shall be as follows:

1. Call to order.
2. Roll call.
3. Determination of quorum.

4. Reading of minutes. (Actual reading may be waived if each member of the Council was furnished with a copy thereof as hereinbefore set forth, and if unanimous consent is given. A majority of the Council shall constitute a quorum.)

5. Scheduled bid lettings.

6. Scheduled hearings.

7. Administrative appeals.

8. Financial reports.

9. Reports of Boards, Committees and Department Heads.

10. Licenses and permits.

11. Unfinished business.

12. New business.

13. Announcements.

14. Adjournment.

#### SEC. 2.43. COMMITTEES.

**Subd. 1. Standing Committees.** The following Standing Committees, each composed of three or more members as determined from time to time by the Council, are hereby established, as follows:

A. Finance, including Licenses.

B. Public Safety, including Police, Fire, Building, Zoning, etc.

C. Public Works, including Streets, Alleys, Sewers, Water & Light.

D. Insurance.

E. Buildings and Grounds.

F. Employment and Labor Relations.

G. Public Welfare, Health, Recreation and Parks and Cemeteries.

Source: City Code

Effective Date: 9-1-75

**Subd. 2. Joint Safety Committee.** (Repealed by Ordinance No. 3, 2nd Series, adopted January 27, 1976.)

**SEC. 2.44. RIGHT TO ADMINISTRATIVE APPEAL.** If any person shall be aggrieved by any administrative decision of the City Clerk-Treasurer, City Administrator, or any Board or Commission not having within its structure an appellate procedure, such aggrieved person is entitled to a full hearing before the Council upon serving a written request therefor upon the Mayor and the City Clerk-Treasurer at least five (5) days prior to any regular Council meeting. Such request shall contain a general statement setting forth the administrative decision to be challenged by the appellant. At such hearing the appellant may present any evidence he/she deems pertinent to the appeal, but the City shall not be required to keep a verbatim record of the proceedings. The Mayor, or other officer presiding at the hearing, may, in the interest of justice or to comply with the time requirements and on his/her own motion or the motion of the appellant, the City Clerk-Treasurer, City Administrator, or a member of the Council, adjourn the hearing to a more convenient time or place, but such time or place shall be fixed and determined before adjournment so as to avoid the necessity for formal notice of reconvening.

Source: Ordinance No. 165, 2nd Series  
Effective Date: 9-12-89

**SEC. 2.45. RULES OF PROCEDURE FOR APPEALS AND OTHER HEARINGS.** The Council may adopt by resolution certain written rules of procedure to be followed in all administrative appeals and other hearings to be held before the Council or other bodies authorized to hold hearings and determine questions therein presented. Such rules of procedure shall be effective thirty (30) days after adoption and shall be for the purpose of establishing and maintaining order and decorum in the proceedings.

Source: City Code  
Effective Date: 9-1-75

**SEC. 2.46. FACSIMILE SIGNATURES.** The Mayor and City Clerk-Treasurer are hereby authorized to request a depository of City funds to honor an order for payment when such instrument bears a facsimile of his/her signature, and to charge the same to the account designated thereon or upon which it is drawn. Such officers are also hereby authorized to use such facsimile signatures on other documents and request other parties thereto or recipients thereof to honor signatures affixed in such manner. Facsimile signatures shall be as effective as though manually written. Such authority is granted only for the purpose of permitting such officers an economy of time and effort.

Source: Ordinance No. 136, 2nd Series  
Effective Date: 7-12-85

**SEC. 2.47. INTERIM EMERGENCY SUCCESSION.**

**Subd. 1. Purpose.** Due to the existing possibility of a nuclear attack or a natural disaster requiring a declaration of a state of emergency, it is found urgent and necessary to insure the continuity of duly elected and lawful leadership of the City to provide for the continuity of the government and the emergency interim succession of key governmental officials by providing a method for temporary emergency appointments to their offices.

**Subd. 2. Succession to Local Offices.** In the event of a nuclear attack upon the United States or a natural disaster affecting the vicinity of the City, the Mayor, Council and City Clerk-Treasurer shall be forthwith notified by any one of said persons and by any means available to gather at the City Hall. In the event that safety or convenience dictate, an alternative place of meeting may be designated. Those gathered shall proceed as follows:

**A.** By majority vote of those persons present, regardless of number, they shall elect a Chairman and Secretary to preside and keep minutes, respectively.

**B.** They shall review and record the specific facts relating to the nuclear attack or natural disaster and injuries to persons or damage to property already done, or the imminence thereof.

**C.** They may, based on such facts, declare a state of emergency.

**D.** By majority vote of those persons present, regardless of number, they shall fill all positions on the Council, (including the office of Mayor) of those persons upon whom notice could not be served or who are unable to be present.

**E.** Such interim successors shall serve until such time as the duly elected official is again available and returns to his/her position, or the state of emergency has passed and a successor is designated and qualifies as required by law, whichever shall occur first.

**Subd. 3. Duties of the Interim Emergency Council.** The Interim Emergency Council shall exercise the powers and duties of their offices, and appoint other key government officials to serve during the emergency.

**SEC. 2.48. DISPOSAL OF UNCLAIMED PROPERTY AND EXCESS PROPERTY.**

**Subd. 1. Disposal of Unclaimed Property.**

**A. Definitions.** The term "abandoned property" means tangible or intangible property that has lawfully come into the possession of the City in the course of municipal operations, remains unclaimed by the owner, and has been in the possession of the City for at least sixty (60) days and has been declared such by a resolution of the Council.

**B. Preliminary Notice.** If the City Clerk-Treasurer knows the identity and whereabouts of the owner, he/she shall serve written notice upon him/her at least thirty (30) days prior to a declaration of abandonment by the Council. If the City acquired possession from a prior holder, the identity and whereabouts of whom are known by the City Clerk-Treasurer notice shall also be served upon him. Such notice shall describe the property and state that unless it is claimed and proof of ownership, or entitlement to possession established, the matter of declaring it abandoned property will be brought to the attention of the Council after the expiration of thirty (30) days from the date of such notice.

**C. Notice and Sale.** Upon adoption of a resolution declaring certain property to be abandoned property, the City Clerk-Treasurer shall publish a notice thereof describing the same, together with the names (if known) and addresses (if known) of prior owners and holders thereof, and including a brief description of such property. The text of such notice shall also state the time, place and manner of sale of all such property, except cash and negotiables. Such notice shall be published once at least three (3) weeks prior to sale. Sale shall be made to the highest bidder at public auction or sale conducted in the manner directed by the Council in its resolution declaring property abandoned and stated in the notice.

**D. Fund and Claims Thereon.** All proceeds from such sale shall be paid into the General Fund of the City and expenses thereof paid therefrom. The former owner, if he/she makes claim within eight (8) months from the date of publication of the notice herein provided, and upon application and satisfactory proof of ownership, may be paid the amount of cash or negotiables or, in the case of property sold, the amount received therefor, less a pro-rata share of the expenses of storage, publication of notice, and sale expenses, but without interest. Such payment shall be also made from the General Fund.

Source: City Code  
Effective Date: 9-1-75

**Subd. 2. Disposal of Excess Property.**

**A. Declaration of Surplus and Authorizing Sale of Property.**

The City Clerk-Treasurer may, from time to time, recommend to the Council that certain personal property (chattels) owned by the City is no longer needed for a municipal purpose and should be sold. By action of the Council, said property shall be declared surplus, the value estimated and the City Clerk-Treasurer authorized to dispose of said property in the manner stated herein. Provided, that a sale to another governmental agency shall not be regulated by this Section.

**B. Surplus Property Worth a Total Estimated Value of Less than \$100.00.** The City Clerk-Treasurer may sell surplus property with a total value of less than \$100.00 through negotiated sale.

Source: Ordinance No. 206, 2nd Series  
Effective Date: 1-10-98

**C. Surplus Property With a Total Estimated Value in Excess of \$100.00.** The City Clerk-Treasurer shall offer for public sale, to the highest bidder, surplus property with a total estimated value in excess of \$100.00. Such public sale shall be conducted by one of the two following procedures:

1. Notice of such public sale shall be given stating time and place of sale and generally describing the property to be sold at least ten (10) days prior to the date of sale either by publication once in the official newspaper, or by posting in a conspicuous place in the City Hall at the City Clerk-Treasurer's option. Such sale shall be by auction.

or

2. The surplus property shall be listed and sold using an on-line government auction website such as [www.publicsurplus.com](http://www.publicsurplus.com).

Source: Ordinance No. 346, 2nd Series  
Effective Date: 3-7-2008

**D. Receipts From Sales of Surplus Property.** All receipts from sales of surplus property under this Section shall be placed in the General fund.

Source: Ordinance No. 206, 2nd Series  
Effective Date: 1-10-98

**Subd. 3. Persons Who May Not Purchase - Exception.**

**A.** No employee of the City who is a member of the administrative staff, department head, a member of the Council, or an advisor serving the City in a professional capacity, may be a

purchaser of property under this Section. Other City employees may be purchasers if they are the highest responsible bidder, and if at least one week's published or posted notice of sale is given.

**B.** It is unlawful for any person to be a purchaser of property under this Section if such purchase is prohibited by the terms of this Section.

Source: Ordinance No. 60, 2nd Series  
Effective Date: 9-18-79

**SEC. 2.49. SALARIES OF MAYOR AND COUNCIL MEMBERS.** Salaries of the Mayor and the Council are hereby fixed as follows, which amounts are deemed reasonable:

**Subd. 1.** The salary of the Mayor shall be \$900.00 per month.

**Subd. 2.** The salary of the City Clerk-Treasurer shall be \$900.00 per month.

**Subd. 3.** The salary of each Council Member, other than the City Clerk-Treasurer, shall be \$600.00 per month.

**Subd. 4.** The Council may, by resolution, provide other fringe benefits similar to those furnished to employees of the City.

Source: Ordinance No. 330, 2nd Series  
Effective Date: 11-18-2006

**SEC. 2.50. PARTIAL PREPAYMENT OF SPECIAL ASSESSMENTS.**

**Subd. 1. Partial Prepayment of Assessments Permitted.** After the adoption of an assessment roll pursuant to Chapter 429 of Minnesota Statutes Annotated, as amended, and before certification of said assessment roll to the County Auditor, the City Clerk-Treasurer, or other authorized official, is authorized and directed to accept partial prepayment of said assessment, and reduce the amount certified to the County Auditor accordingly. As provided by law, such partial prepayment may be accepted only during the thirty-day period following approval of the assessment roll.

Source: Ordinance No. 82, 2nd Series  
Effective Date: 5-23-81

**Subd. 2. Scope.** This Section shall apply to all assessment rolls which, on the effective date hereof, have been adopted by the Council but not yet certified to the County Auditor, and to all assessment rolls subsequently adopted by the Council.

Source: City Code  
Effective Date: 9-1-75

**SEC. 2.51. SERVICES AND COMPENSATION OF CIVIL DEFENSE DIRECTOR.**

**Subd. 1. Services.** The Council may hire its own Civil Defense Director, or may enter into a cooperative agreement for the services of a Civil Defense Director.

**Subd. 2. Compensation.** The compensation of a Civil Defense Director for any services rendered to the City may be fixed and determined by resolution of the Council.

Source: Ordinance No. 47, 2nd Series  
Effective Date: 3-3-78

**SEC. 2.52. WORKER'S COMPENSATION.**

**Subd. 1. Contractors.** The City shall not enter into any contract for doing public work before receiving from all other contracting parties acceptable evidence of compliance with the worker's compensation insurance coverage requirement of Minnesota Statutes.

**Subd. 2. City Officers.** All officers of the City elected or appointed for a regular term of office or to complete the unexpired portion of any such regular term shall be included in the definition of "employee" as defined in Minnesota Statutes relating to coverage for purposes of worker's compensation entitlement.

Source: Ordinance No. 167, 2nd Series  
Effective Date: 9-2-89

**SEC. 2.53. CITY ADMINISTRATOR.**

**Subd. 1. Office Established.** The office of the City Administrator is hereby established. The City Administrator shall be appointed by the Council and shall be administrative head of the government of the City. The City Administrator shall be responsible for the efficient administration of all departments of the City.

**Subd. 2. Appointment, Compensation and Tenure.** The City Administrator shall be appointed without regard to such Administrator's political beliefs and need not be a resident of the City when appointed. The City Administrator shall be appointed for an indefinite term. The City Administrator's compensation shall be determined by the Council. In the absence or the disability of the City Administrator, the Council may designate a qualified administrative officer of the City to perform the duties of the City Administrator during such absence or disability.

The City Administrator may at any time be removed from office by a majority vote of the elected members of the Council.

**Subd. 3. Duties and Powers.**

**A.** To enforce the laws and City Code provisions.

**B.** Except as otherwise provided by statute, may recommend the appointment of and may recommend the removal of all employees (except the City Attorney and his or her assistants and except all essential employees of the Hibbing Fire Department and the Hibbing Police Department and except the Deputy Clerk) authorized by the Council to be hired or removed, and subject to approval of the Council, and further subject to any applicable Civil Service regulations. The Council shall make the actual appointment by motion stating the name, position, salary, duration or term of appointment, bond requirement and any other necessary matter. No appointment shall be made upon any basis other than that of merit and fitness.

**C.** To exercise supervision and control of all departments and divisions of the City government except the City Attorney and his or her assistants.

**D.** To attend all meetings of the Council with the right to take part in the discussion but with no right to vote.

**E.** To recommend to the Council for adoption such measures as may be deemed necessary or expedient for the welfare of the City. Any proposed measures or projects which may have an impact on the finances of the City shall be approved by the Council before being pursued in depth or finalized by the City Administrator. Once Council approval is granted, the City Administrator shall prepare monthly status reports on each such measure or project.

**F.** To see that all terms and conditions imposed in any contract or public utility franchise in favor of the City or to its inhabitants are faithfully kept and performed.

**G.** To make, in the ordinary course of business, all purchases of materials and supplies necessary for the City as provided for in the Annual Budget; provided that on purchases of more than \$3,000.00 approval shall first be procured from the Council before making such purchases, and in all cases there shall be compliance with the statutory provisions as to solicitation of bids.

**H.** To assist the Council in preparing the Annual Budget each year.

**I.** For the purpose of assisting the Council in preparing the budget, the City Administrator shall be authorized to require all department heads to submit statements of the estimated expenses for the next calendar year of their respective departments, a description of proposed City improvements for their respective departments and the

probable expense thereof, a description of all unperformed contracts and a statement of the amount of all unexpired appropriations of the preceding year for their respective departments.

**J.** To have and exercise the power, authority and duties of any Department Head or Division Head of the City government during the time when such office shall be vacant or no person shall have been appointed thereto except the Police Chief, the Fire Chief and the City Attorney and his or her assistants.

**K.** To issue or cause to be issued all licenses and permits not otherwise provided for by statute or the City Code.

**L.** To prescribe rules and regulations for the conduct of the various departments of the City and divisions thereunder.

**M.** To recommend to the Council the reorganization or consolidation of the departments of the City.

**N.** To prepare the Agenda for all Council meetings. In addition to those items initiated by the City Administrator, the City Administrator shall place on the Agenda any and all items submitted in writing by a Council member for consideration. No item submitted by a Council member shall be removed from the Agenda without the prior written approval of the Council member who requested that the item be placed on the Agenda.

**O.** To perform such other duties as may be prescribed by the City Code or resolution of the Council.

**P.** To devote such Administrator's entire time to the discharge of such Administrator's official duties.

**Subd. 4. Urgent Expenditures.** Whenever, in the judgment of the City Administrator, exigency shall require the making of any purchase of material or supplies for a price in excess of \$3,000.00 but less than \$5,000.00 prior to the next regular meeting of the Council, the City Administrator, with the written approval of the Mayor and City Clerk-Treasurer, may make such purchase without waiting for formal approval of the specific purchase by the Council as a whole; provided, that such purchase shall not violate any relevant statutory requirement as to solicitation of bids.

**Subd. 5. Bond Required.** Before entering upon the duties of the City Administrator's office, the City Administrator shall furnish a corporate surety bond to be approved by the Council as to amount and by the City Attorney as to form, such bond to be conditioned upon the faithful performance of such Administrator's duties. The premium for such bond shall be paid by the City.

Source: Ordinance No. 405, 2nd Series  
Effective Date: 05-01-2012

**SEC. 2.54. ORDINANCE REVIEW BY CITY ATTORNEY.** No ordinance shall be adopted by the Council unless and until it has been reviewed by the City Attorney, and he/she has endorsed a statement thereon similar to: "The foregoing Ordinance reviewed and approved as to form."

Source: Ordinance No. 82, 2nd Series  
Effective Date: 5-23-81

**SEC. 2.55. EMPLOYEE'S GROUP HEALTH INSURANCE TRUST FUND.**

**Subd. 1. Creation.** In accordance with the statutory authority expressly granted, the City does hereby create an "Employee's Group Health Insurance Trust Fund", which shall be created and maintained in accordance with generally accepted accounting principles (GAAP) as promulgated by the National Council on Governmental Accounting (NCGA) and the Government Finance Officers Association of the United States and Canada (GFOA).

**Subd. 2. Sources of Funds.** The City shall deposit or transfer into the Employee's Group Health Insurance Trust Fund, in a timely manner and on a routine basis, any and all funds annually appropriated by the Council, along with any and all prescribed contributions from employees and/or group participants for the procurement and provision of negotiated medical benefit plan coverage(s).

**Subd. 3. Uses of Funds.** The fund assets, held in trust by the City on behalf of employee and plan participants, shall only be disbursed upon the presentation of verified claims and invoices and shall not be transferred out or used for any other purpose or programs. Expenses and expenditures charged to the fund are limited to those that are made for or on behalf of medical benefit plan participants to recognized providers and institutions; the purchase of group plan insurance, co-insurance, or reinsurance coverage(s); and, primary and secondary administrative costs attributable to the provision of program benefits.

**Subd. 4. Fund Reserves.** Annually, prior to the establishment of program participant charges for the ensuing year, representatives of the City, the Insurance Committee and other interested parties shall meet to review the results of operation for the Employee's Group Health Insurance Trust Fund. At this meeting, an insurance actuary or risk manager hired by the City, with input from the Insurance Committee, shall recommend an appropriate level of reserves to be maintained by the fund.

**Subd. 5. Insurance Committee.** The Insurance Committee shall meet no less than quarterly. In addition to any other business before it, the Insurance Committee shall be presented with financial data for its review and inspection at this quarterly meeting. In addition to these financial reports, members of the Insurance Committee or duly authorized representatives of recognized bargaining units may have access to information and may discuss the operation of the insurance program/fund with City officials during normal business hours.

**Subd. 6. Annual Financial Audit.** An annual audit of the Employee's Group Health Insurance Trust Fund shall be conducted, and the audit shall be performed in accordance with generally accepted auditing standards (GAAS). Furthermore, the financial results of operation shall be reported and incorporated along with all other City funds in the Comprehensive Annual Financial Report (CAFR).

**Subd. 7. Dissolution.** The Employee's Group Health Insurance Trust Fund can only be dissolved by a unanimous vote of the Council. Upon the event of dissolution, all assets held or accruing to the Employee's Group Health Insurance Trust Fund shall be dedicated by some action or means and shall only be used for the express purpose of procuring and providing medical coverage for plan participants.

Source: Ordinance No. 203, 2nd Series  
Effective Date: 5-1-93

**SEC. 2.56. TRUST OR ESCROW ACCOUNT FOR FIRE OR EXPLOSION LOSSES.** The City may establish a trust or escrow account to hold proceeds from losses arising from fire or explosion of insured real property located within the City. The City may utilize these funds to secure, repair or demolish damaged or destroyed structures and clear the property in question, so that the structure and property are in compliance with local code requirements and applicable City Code provisions. Any unused portion of the retained proceeds shall be returned to the insured. In addition, the regulatory and procedural provisions of Minnesota Statutes, 65A.50, Trust or Escrow Accounts; Insured Real Property Fire or Explosion Loss Proceeds are hereby incorporated herein and adopted by reference, including the penalty provision thereof.

Source: Ordinance No. 229, 2nd Series  
Effective Date: 2-28-97

**CODIFIER'S NOTE:** Ordinance No. 229, 2nd Series, numbered the above Section as Sec. 2.55.

(Sections 2.57 through 2.59, inclusive, reserved for future expansion.)

(Pages 70 through 74 reserved)

**SEC. 2.60. PRECINCT BOUNDARIES.** The Precinct Boundaries shall be as adopted by resolution of the Council and kept on file in the office of the City Clerk-Treasurer.

Source: City Code  
Effective Date: 9-1-75

**SEC. 2.61. ABSENTEE BALLOT COUNTING BOARD.** The Council hereby authorizes an Absentee Ballot Counting Board and further authorizes the election judges of such Board to receive, examine and validate absentee ballots. The further duties of such Board shall be those provided by statute.

Source: Ordinance No. 96, 2nd Series  
Effective Date: 10-30-82

(Sections 2.62 through 2.69, inclusive, reserved for future expansion.)

(Pages 76 through 80 reserved)

**SEC. 2.70. FRANCHISES.**

**Subd. 1. Definition.** The term "franchise" as used in this Section shall be construed to mean any special privileges granted to any person in, over, upon, or under any of the streets or public places of the City, whether such privilege has heretofore been granted by it or by the State of Minnesota, or shall hereafter be granted by the City or by the State of Minnesota.

**Subd. 2. Franchise Ordinances.** The Council may grant franchises by ordinance. Franchise rights shall always be subject to the superior right of the public to the use of streets and public places. All persons desiring to make any burdensome use of the streets or public places, inconsistent with the public's right in such places, or desiring the privilege of placing in, over, upon, or under any street or public place any permanent or semipermanent fixtures for the purpose of constructing or operating railways, telegraphing, or transmitting electricity, or transporting by pneumatic tubes, or for furnishing to the City or its inhabitants or any portion thereof, transportation facilities, water, light, heat, power, gas, or any other such utility, or for any other purpose, shall be required to obtain a franchise before proceeding to make such use of the streets or public places or before proceeding to place such fixtures in such places.

**Subd. 3. Power of Regulation Reserved.** The City shall have the right and power to regulate and control the exercise by any person, of any franchise however acquired, and whether such franchise has been heretofore granted by it or by the State of Minnesota.

**Subd. 4. Conditions in Every Franchise.** All conditions specified in this Section shall be a part of every franchise even though they may not be expressly contained in the franchise:

**A.** That the grantee shall be subject to and will perform on its part all the terms of this Section and will comply with all pertinent provisions of any City Charter and City Code, as the same may from time to time be amended.

**B.** That the grantee shall in no case claim or pretend to exercise any power to fix fares, rates, and charges; but that such fares, rates, and charges shall at all times be just, fair and reasonable for the services rendered and shall in all cases be fixed and from time to time changed, unless regulated by an agency of the State of Minnesota, in the manner following:

**1.** A reasonable rate shall be construed to be one which will, with efficient management, normally yield above all operating expenses and depreciation, a fair return upon all money invested.

2. If possible maximum rates and charges shall be arrived at by direct negotiation with the Council.

3. If direct negotiations fail to produce agreement, the Council shall, not less than thirty (30) days before the expiration of any existing rate schedule or agreement, appoint an expert as its representative the franchisee shall likewise appoint an expert as its representative and the two of them shall appoint a third person, preferably an expert, and the three of them shall constitute a board of arbitration. The board shall report its findings as soon as possible and the rates and charges it shall agree upon by majority vote shall be legal and binding, subject only to review by a court of competent jurisdiction upon application of one of the parties.

C. That the Council shall have the right to require reasonable extensions of any public service system from time to time, and to make such rules and regulations as may be required to secure adequate and proper service and to provide sufficient accommodations for the public.

D. That the grantee shall not issue any capital stock on account of the franchise or the value thereof, and that the grantee shall have no right to receive upon condemnation proceedings brought by the City to acquire the public utility exercising such franchise, any return on account of the franchise or its value.

E. That no sale or lease of said franchise shall be effective until the assignee or lessee shall have filed with the City an instrument, duly executed, reciting the facts of such sale or lease, accepting the terms of the franchise, and agreeing to perform all the conditions required of the grantee thereunder.

F. That every grant in said franchise contained of permission for the erection of poles, masts, or other fixtures in the streets and for the attachment of wires thereto, or for the laying of tracks in, or of pipes or conduits under the streets or public places, or for the placing in the streets or other public places of any permanent or semi-permanent fixtures whatsoever, shall be subject to the conditions that the Council shall have the power to require such alterations therein, or relocation or rerouting thereof, as the Council may at any time deem necessary for the safety, health, or convenience of the public, and particularly that it shall have the power to require the removal of poles, masts, and other fixtures bearing wires and the placing underground of all facilities for whatsoever purpose used.

G. Every franchise shall contain a provision granting the City the right to acquire the same in accordance with statute.

**H.** That the franchisee may be obligated by the City to pay the City fees to raise revenue or defray increased costs accruing as a result of utility operations, or both, including, but not limited to, a sum of money based upon gross operating revenues or gross earnings from its operations in the City.

**Subd. 5. Further Provisions of Franchises.** The enumeration and specification of particular matters which must be included in every franchise or renewal or extension thereof, shall not be construed as impairing the right of the City to insert in any such franchise or renewal or extension thereof such other and further conditions and restrictions as the Council may deem proper to protect the City's interests, nor shall anything contained in this Section limit any right or power possessed by the City over existing franchises.

Source: City Code  
Effective Date: 9-1-75

## **SEC. 2.71 CABLE TV FRANCHISE**

**Subd. 1. Definitions:** For the purposes of this Section, the following terms, phrases, words, abbreviations, and their derivations, shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. (The word "may" is directory and discretionary and not mandatory; the word "shall" is mandatory and not merely directory or discretionary.)

**(a)** "Cable System" shall mean the facility of the Grantee consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City, including specifically an open video system that complies with 47 U.S.C. § 573.

**(b)** "Cable Service" or "Service" shall mean the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service pursuant to Minn. Stat. § 238.01 et seq. and 47 U.S.C. § 521 et seq.

**(c)** "City" shall mean the City of Hibbing, a municipal corporation of the State of Minnesota, in its present incorporated form, or in any later reorganized, consolidated, enlarged or reincorporated form.

**(d)** "Council" shall mean the present governing body of the City or any future board constituting the legislative body of the City.

**(e)** "Drop" shall mean the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the system.

(f) "Franchise Fee" shall mean the fee or assessment imposed by the City on a Grantee solely because of its status as a recipient of a cable franchise. For purposes of this franchise, "franchise fees" do not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); (ii) capital costs which are required by this franchise related to the provision of public, educational, or governmental access facilities; (iii) requirements or charges incidental to awarding or enforcing this franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages, or other regulatory costs specifically required herein in addition to the franchise fee; (iv) any fee imposed under Title 17 of the United States Code.

(g) "Grantee" shall mean Mediacom Minnesota LLC.

(h) "Gross Revenues" shall mean all revenue received directly or indirectly by the Grantee from the operation of its cable system in the City to provide cable service. Such revenues shall include, but not be limited to, fees for cable service, installation and reconnection fees, upgrade and downgrade fees, advertising revenue, revenues generated by sales on home shopping channel(s), leased channel fees, and equipment rental fees. For purposes of this franchise, "gross revenues" shall not include bad debt, or any taxes on services furnished by Grantee which are imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.

(i) "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in the City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property including any other rights-of-way dedicated for travel purposes and utility easements, except property which the City owns in fee.

(j) "Right-of-Way Ordinance" means such ordinance adopted by the City creating requirements regarding regulation, management and use of rights-of-way, including registration and permitting requirements.

(k) "Subscriber" means any person or entity receiving for any purpose the cable service of the Grantee herein.

(l) "Tap" means the device used to connect a drop to a subscriber location from the cable system feeder line.

**Subd. 2. Uses Permitted by Grantee.** The City hereby grants to Grantee the right to engage in the business of operating and providing a cable system to provide cable service in the City of Hibbing, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in the right-of-way, such poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to

the cable system; and in addition so to use, operate and provide similar facilities or properties rented or leased from the public utility operated by Hibbing Public Utilities. No permission or license is given to enter private property without the express consent of the owner or agent in possession thereof except as may be permitted by federal law.

**Subd. 3. Duration of Renewed Franchise.** The franchise granted by the City under this ordinance shall be for a term of fifteen (15) years expiring on December 31, 2023. The parties acknowledge that the terms of this franchise could be preempted or superceded by future changes in state or federal law.

**Subd. 4. Limitations of Franchise.**

(a) The franchise granted under this ordinance shall be nonexclusive. If City grants an additional cable franchise, said grant shall be in accordance with Minn. Stat. § 238.08. Any additional cable franchise(s) shall, at a minimum, contain no more favorable or less burdensome terms and conditions; provided, however, that nothing herein prohibits the City from imposing additional or more stringent terms and conditions on a second or subsequent cable franchisee. Any process for the grant of an additional cable franchise developed by the City shall comply with Minn. Stat. § 238.081. An applicant for an additional franchise, shall, at the time such application is filed with the City, provide an application fee to cover the reasonable and necessary costs incurred by the City in the process of awarding the franchise.

(b) The franchise granted under this ordinance complies with franchise standards contained in Minnesota Statutes, Chapter 238.

(c) No privilege or exemption shall be granted or conferred by the franchise granted hereunder except those specifically prescribed herein.

(d) Any privilege claimed under this franchise by the Grantee in any street, or other public property, shall be subordinate to any prior lawful occupancy of the streets, or other public property.

(e) This franchise cannot be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale or merger, consolidation, or otherwise, without the prior written consent of the Council as prescribed in Minnesota Statutes 238.083. Said consent of the City may not be arbitrarily refused provided, however, the proposed assignee must show financial responsibility and must agree to comply with all provisions of this ordinance; and provided, further, that no such consent shall be required for a transfer in trust, mortgage or other hypothecation as a whole, to secure an indebtedness.

(f) In the event of any proposed sale or assignment pursuant to paragraph (e) above, City shall have the right to purchase the Grantee's system. City shall be deemed to have waived its rights under this paragraph in the following circumstances:

(1) If it does not indicate to Grantee in writing, within ninety (90) days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or

(2) It approves the assignment or sale of the franchise as provided within paragraph (e) above.

(g) Time shall be of the essence of any such franchise granted. The Grantee shall not be relieved of his obligation to comply promptly with any of the provisions of this ordinance or by any failure of the City to enforce prompt compliance.

(h) Any right or power in, or duty impressed upon any officer, employee, department, or board of the City shall be subject to transfer by the City to any other officer, employee, department, or board of the City.

(i) The Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provisions or requirements of this ordinance, or its enforcement.

(j) Any such franchise granted shall not relieve the Grantee of any obligation involved in obtaining pole space from any department of the City, utility company, or from others maintaining poles in streets.

(k) The Grantee and the City agree that each of them will conform to applicable and valid state laws within one year after any effective date and will conform to any applicable and valid federal law upon its effective date.

**Subd. 5. Permits, Installation and Service.** The Grantee shall maintain all necessary permits and authorizations which are required in the conduct of its business, including but not limited to any utility joint use attachment agreements, microwave carrier licenses, or any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable systems, or their associated microwave transmission facilities.

**Subd. 6. Location of Grantee's Facilities.**

(a) Any poles, wires, cable lines, conduits or other properties of the Grantee to be constructed or installed in streets shall be so constructed or installed only at such locations and in such manner as shall be approved by the City Engineer, acting in the exercise of his reasonable discretion.

(b) The Grantee shall not install or erect any facilities or apparatus on public property or rights-of-way within the City (except those installed or erected upon public utility facilities now existing) without written approval of the City.

(c) In those areas and portions of the City where both the transmission and distribution facilities of the public utility providing

telephone service and those of the utility providing electric service are underground, or hereafter may be placed underground, then the Grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground. Amplifiers in Grantee's transmission and distribution lines may be in metal or concrete pedestals or vaults upon the surface of the ground.

(d) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the Grantee, but it does not make arrangements for such use, the City Engineer may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

(e) Drop Burial. Grantee shall bury all drops in a reasonable time period, which shall not exceed fifteen (15) business days, subject to weather conditions and the completion of required utility locates. In the event the ground is frozen or flooded, Grantee shall be permitted to delay burial until the ground is suitable for burial which in the case of frozen ground shall not be later than June 30th.

(f) Compliance with Applicable Laws, Resolutions and Ordinances. Nothing in this franchise shall be construed to prevent the City from adopting a right-of-way ordinance governing future system construction or Grantee's work in the City. The terms of this franchise shall define the contractual rights and obligations of Grantee with respect to the provision of cable service and operation of the system in the City. However, the Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power, local ordinance-making authority, and eminent domain rights of the City. Notwithstanding Minn. Stat. § 237.163, Subd. 6(c), in the event of any conflict between this franchise and a right-of-way ordinance or other regulation which addresses usage of the rights-of-way, the conflicting term of this franchise shall be superseded by such ordinance or regulation regardless of which requirement was first adopted, provided that said ordinance or regulation is consistent for all users of the right-of-way.

(g) Headend or Hub Location. The Grantee shall maintain a transmission headend, equipment hub, or other facility in the City, subject to the requirements of Subds. 5, 6, and 8 herein, permitting insertion or origination of local video programming.

#### **Subd. 7. City Rights in Franchise.**

(a) The right is hereby reserved to the City or the City Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

(b) Upon notice to Grantee, the City shall have the right to inspect the maps, plans, and other like materials of the Grantee at any time during normal business hours.

(c) The City shall have the right, during the life of this franchise, to install and maintain upon the poles of the Grantee any wire and pole fixtures necessary for a police alarm system, on the condition that such wire and pole fixtures do not interfere with the cable system operations of the Grantee.

(d) The City shall have the right to make such inspection of the construction or installation work performed subject to the provisions of this franchise as it shall find necessary to make compliance with the terms of this franchise and other pertinent provisions of law.

(e) At the expiration of the term for which this franchise is granted, or upon its termination and cancellation, as provided for herein, the City shall have the right to require the Grantee to remove at its own expense all portions of the cable system from all public ways within the City.

(f) Upon termination or cancellation of this franchise as provided for herein, the City, insofar as it is consistent with federal law, and upon the payment of fair market value to the Grantee, shall have the right to purchase and take over the cable system in its entirety.

(g) After the expiration of the term for which this franchise is granted, or after its termination and cancellation, as provided for herein, the City shall have the right to determine whether the Grantee shall continue to operate and maintain the cable system pending the decision of the City as to the future maintenance and operation of such system.

**Subd. 8. Change Required by Public Improvements.**

(a) The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street, alley or public place, or remove from the street, alley or public place, any property of the Grantee when required by the City Engineer by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity, or any other structures or public improvements; provided, however, the Grantee shall in all such cases have the privileges and be subject to the obligations to abandon any property of the Grantee in place, as provided in Subd. 8 hereof.

(b) To the extent not inconsistent with any other local law, all wires, conduits, cable and other property and facilities of Grantee shall be located, constructed, installed, and maintained in compliance with applicable codes. Grantee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

**Subd. 9. Failure to Perform Street Work.** Upon failure of the Grantee to complete any work required by law or by the provisions of this ordinance to be done in any street within the time prescribed, and to the satisfaction of the City Engineer, the City Engineer, upon fourteen (14) days notice to the Grantee may cause such work to be done, and the Grantee shall pay to the City the cost thereof in the itemized amounts reported by the City Engineer to the Grantee within sixty (60) days after receipt of such itemized report.

**Subd. 10. Insurance for and Indemnification of the City.**

(a) The Grantee shall indemnify the City, its officers and its employees, against all claims, demands, actions, suits and proceedings by others against all liability to others, and against any loss, cost and expense resulting therefrom including reasonable attorney's fees, arising out of the exercise or enjoyment of its franchise, irrespective of the amount of the comprehensive liability insurance policy required hereunder.

(b) The Grantee shall, at all times during the existence of any franchise issued hereunder, maintain in full force and effect, furnish to the City, and file with the Council, (at its own cost and expense) a general comprehensive liability insurance policy, including contractual coverage, in protection of the City, its officers, boards, commissions, agents and employees in a company approved by the Mayor and in a form satisfactory to the City Attorney, protecting the City and all persons against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of Grantee under such franchise, with minimum liability limits of One Million (\$1,000,000) Dollars for personal injury or death resulting from any one occurrence, and One Million (\$1,000,000) Dollars for damage to property resulting from any one occurrence.

(c) The policies mentioned in the foregoing paragraph shall name the City, its officers, boards, commissions, agents and employees, as additional insured and shall contain a provision that a written notice of any cancellation or reduction in coverage of said policy shall be delivered to the City ten (10) days in advance of the effective date thereof; if such insurance is provided in either case by a policy which also covers Grantee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement.

(d) No franchise granted under this ordinance shall be effective unless and until each of the foregoing policies of insurance as required in this section have been delivered to the City.

(e) Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

**Subd. 11. Franchise Fee.**

(a) During the term of the franchise, Grantee shall pay to the City a franchise fee in an annual amount of up to 5 percent (5%) of its gross revenues. The franchise fee shall initially be set at 5 percent (5%) of gross revenues. The City may modify the franchise fee, no more than once per calendar year, by adopting a Resolution identifying the amount of the franchise fee. The City shall provide sixty (60) day notice of any modification in the franchise fee amount to Grantee. Any change in the franchise fee amount shall be effective in the billing cycle immediately following the sixty (60) day notice. The City acknowledges Grantee's right pursuant to 47 U.S.C. § 546(c) to itemize and pass this fee through on subscriber's bills.

(b) Any payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each calendar quarter together with a report in form reasonably acceptable to City which shows the basis for the computation. For a six (6) year period following the receipt of payment, any amounts paid shall be subject to audit and recomputation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount.

**Subd. 12. Grantee Contribution to City for Public Access.**

(a) After a vote of the City Council and sixty (60) days notice to Grantee, City may impose an Access Fee for the purpose of promoting the public access uses of the cable system. Said Access Fee shall not exceed one dollar (\$1.00) per subscriber per month. Grantee reserves the right to itemize and pass-through this fee on subscriber's bills. Such payment by Grantee shall be separate from and in addition to any franchise fee.

(b) Grantee shall ensure that the system, and each access channel, is capable of two-way signal transmission and live programming from the following institutional sites: City Hall, the City's main access studio, the main conference room at the Hibbing Park Hotel, Hibbing Memorial Building, Community College, First Lutheran Church, Blessed Sacrament, Cheever Field, Bennett Park and all Hibbing Public Schools. The Grantee shall not be required to provide any end-user equipment to facilitate, produce, or transmit programming.

**Subd. 13. Inspection of Property and Records.** With reasonable advance notice, the Grantee shall permit any duly authorized representative of the City to examine, during normal business hours, all property of the Grantee, together with any appurtenant property of the Grantee situated within or without the City, and to examine and transcribe any and all maps and other records kept or maintained by the Grantee or under its control related to Grantee's compliance with the franchise, or Grantee's operations pursuant to the franchise. The Grantee shall at all times make and keep in the City full and complete plans and records showing the exact location of all cable system equipment installed or in use in streets, alleys and public places in the City.

**Subd. 14. Service Requirements.**

(a) System Capacity. Grantee shall maintain at least a 750 MHz fiber/coaxial hybrid system which delivers a minimum of seventy (70) video programmed channels.

(b) Non-Voice Return Communications. The system design will be capable of non-voice return communications.

(c) Signal Quality Requirements. The technical standards promulgated by the Federal Communications Commission ("FCC") relating to cable systems contained in subpart K of part 76 of the FCC rules and regulations relating to cable communications systems and found in Code of Federal Regulations, title 47, section 76.601 to 76.617 as may be amended are herein incorporated by reference and Grantee's signals shall conform to these regulations in all respects. Upon request, the results of tests required to be filed by Grantee with the FCC shall also be copied to City.

(d) Complaints and Malfunctions. Grantee shall limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than twenty-four (24) hours after notice; except that Grantee shall have a reasonable time to correct massive failure arising out of causes beyond the control or without the fault or negligence of the Grantee. Grantee shall maintain a sufficient repair force of technicians that shall render efficient service and shall respond to subscriber complaints or requests for service in accordance with the terms hereof. All complaints shall be resolved within seven (7) business days, to the extent reasonable. Subscribers shall be credited if they are without service for any reason for a period exceeding seventy-two (72) hours. For purposes of this paragraph, "without service" shall mean a material and substantial degradation throughout the basic service or other service tiers or in one (1) or more premium services. Grantee shall, upon request, demonstrate by instruments and otherwise to subscribers that a signal conforming to subsection (a) herein is being delivered. If the City has reasonable cause to believe that Grantee's signals do not meet the technical requirements of subsection (a) of this section, it may require Grantee to submit proof of compliance. The Grantee shall make repairs as required herein and interrupt service only for good cause and for the shortest, time possible. Such interruptions, insofar as possible, shall be preceded by notice, and shall occur during periods of minimum use of the system. Complaints concerning billing, employee courtesy, programming, safety or company policy shall be handled as soon as reasonably practicable. All other complaints relating to service will be rectified in the same day as the complaint is received. Except for good and reasonable cause, Grantee's response will be no more than twenty-four (24) hours after the complaint is received. Customers shall be responsible to pay for equipment that they lose or damage and for the installation of new equipment that they request, Grantee shall not charge for repairs of equipment due to ordinary wear and tear or failures not caused by the customer.

(e) Business office. The Grantee leases an office within the City which shall, for the term of Grantee's current lease expiring on November 30, 2012, and thereafter for the term of any renewal or

extension of such lease, be open during all usual business hours, have a listed toll free telephone number, and be so operated that complaints and requests for repairs or adjustments may be received at any time. Grantee shall adequately staff the local office with sufficient employees to maintain the Cable System and respond to customer service issues. In the event Grantee elects not to renew or extend its office lease, Grantee shall provide advance written notice of such decision to the City along with an explanation of Grantee's plans for maintaining the System and responding to customer service issues and Subscriber complaints.

(f) Additional Customer Service Requirements. The City expressly reserves authority to adopt additional or modified customer service requirements to address subscriber concerns or complaints in accordance with federal law. Any violation of customer service requirements shall be a violation of this franchise.

(g) Special Testing. City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. At Grantee's request, the City shall meet with the Grantee during the thirty (30) day cure period to discuss the need for tests and, if possible, visually inspect those locations which are the focus of concerns. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by City.

#### **Subd. 15. Miscellaneous Provisions.**

(a) All matters herein provided to be filed with the City shall be filed with the City Clerk.

(b) The rate schedule for any service agreement or increase thereto to subscribers must be filed with the City Clerk.

(c) The Grantee must pay to the City a sum of money sufficient to reimburse it for expenses incurred by it in publishing a summary of this ordinance and for attorney's fees incurred in connection with negotiating this franchise ordinance; such payment to be made within ninety (90) days after the City shall furnish such Grantee with a written statement of such expense.

(d) The Administrative Assistant of the City is responsible for the continuing administration of the franchise.

(e) Upon request, Grantee shall submit any cable subscriber contract utilized to City. If no written contract exists, Grantee shall file with the City Clerk a document completely and concisely stating the terms of the residential subscriber contract offered to customers, specifically including the length of the subscriber contract. The length and terms of any subscriber contract shall be available for public inspection during normal business hours.

(f) A list of Grantee's current subscriber rates and charges shall be maintained on file with City and shall be available for public inspection. Grantee shall give City and subscribers written notice of any change in a rate or charge no less than thirty (30) days prior to the effective date of the change.

**Subd. 16. Service to Public Institutions.** The Grantee shall provide and furnish without charge to each elementary and secondary public school now located in the Hibbing school District, each elementary and secondary public or parochial school and each elementary, non-profit educational institution now located within the corporate limits of the City of Hibbing, excluding home schools and day care centers as they now exist or hereafter may be established, the Hibbing City Hall, the Hibbing Main Branch Public Library, the Hibbing Memorial Building, and the Community College the following:

(a) One (1) service outlet for television reception for educational and other programming or reception furnished by the Grantee.

(b) Cable service excluding pay-per-channel and pay-per-view services free of charge.

(c) An additional service outlet in each room or area where service is desired; provided that the institution shall reimburse the Grantee at its actual cost for labor and materials required in the installation of such service outlets in addition to the main outlet, but no service or other charge will be made after the installation.

**Subd. 17. City-Wide Service.** Grantee's cable system and its services shall be made available throughout the City to the following extent:

(a) Access to cable service shall not be denied to any group of potential subscribers because of the income of the residents in the area.

(b) Grantee shall extend its system without individualized charge to those areas of the City that have a density of more than twenty five (25) homes or dwelling units per linear mile measured from the tap location on the existing cable system nearest to the location where service is requested. The Grantee shall have 180 days to complete construction from the date that a request for service is received by Grantee.

(c) Grantee shall extend its system and service to areas with less than twenty five (25) homes or dwelling units per linear mile, with the Grantee bearing a cost equal to the construction costs per mile multiplied by a fraction whose numerator equals the actual number of dwelling units per mile, and whose denominator equals twenty-five (25), and those persons requesting service will bear the remainder of the construction costs on a pro rata basis. The Grantee shall have 180 days to complete construction from the date that a request for service is received by Grantee, and the requesting party provides payment of its pro-rata share of construction costs.

(d) Grantee shall extend its system without individualized charge regardless of the density of homes or dwelling units in an area in the event the Grantee is notified, in writing, that a private development or public improvement project will involve the excavation or opening of a street, alley, public place, or public right-of-way allowing the Grantee to install Cable System facilities underground in conjunction with, or at the same time as, such project, and Grantee's Cable System is at the time of notice within two hundred and fifty (250) feet of such project. The Grantee shall complete construction within such time period as is reasonably required by the project provided, however, that Grantee shall not be required to install facilities unless Grantee receives at least sixty (60) days advance written notice of the project.

(e) The City may assist in paying Grantee's construction costs to the extent permitted by law, including Minnesota Statutes, Section 429.021, Subd. 1(19) or (20). The Grantee waives any objections to the City's use of Minnesota Statutes, Chapter 429 for such purposes.

**Subd. 18. Access Channels.** Grantee shall make available public, educational, governmental, and leased access channels as follows:

(a) The City or its designee is hereby designated to operate, administer, promote and manage public, educational, and local governmental access channels and programming.

(b) Grantee shall provide to each of its subscribers who receive some or all of the services offered on the system, reception on at least three access channels: one specially designated noncommercial public access channel available for use by the general public on a first-come first-served, nondiscriminatory basis; one specially designated access channel for use by local educational authorities; one specially designated access channel available for local government use. Grantee shall also make at least one specially designated access channel available for lease on a first-come first-served nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum must be used for at least one of the specially designated noncommercial public access channels required in this section. No charges may be made for channel time or playback of prerecorded programming on at least one of the specially designated noncommercial public access channels required by this section. Personnel, equipment, and productions costs may be assessed, however, for live studio presentations exceeding five minutes in length. Charges for those production costs and any fees for use of other public access channels must be consistent with the goal of affording the public a low-cost means of television access.

(c) Whenever the specially designated noncommercial public access channel, the specially designated education access channel, the specially designated local government access channel, or the specially designated leased access channel required in subsection 1 above is in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive three-hour period for six weeks running, and there is demand for use of an additional channel for the same purpose, the Grantee shall then have six months in which to provide a new specially designated access channel for the same purpose, provided that provision of such additional channel or channels shall not require the cable system to install converters.

(d) The City or its designee shall be authorized to establish rules pertaining to the administration of the specially designated noncommercial public access channel, the specially designated educational access channel, and the specially designated governmental access channel.

(e) If demand for use of the channels does not warrant activation of all the specially designated access channels required in this part, public, educational, governmental and leased access channel programming may be combined on one or more cable channels. To the extent time is available therefore, access channels may also be used for other broadcast and nonbroadcast services, provided that such services are subject to immediate displacement if there is demand to use the channel for its specially designated purpose. Each such system shall, in any case, provide at least one full channel on the VHF spectrum for shared access programming.

(f) Grantee shall provide endpoint equipment necessary for the transmission of the programming and playback of prerecorded programs for the specially designated noncommercial access channels.

#### **Subd. 19. Privacy.**

(a) No signals of a Class IV cable communications channel be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewed at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

(b) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including, but not limited to, lists of the names and addresses of the subscribers or any lists that identify the viewing habits of subscribers, may be sold or otherwise made

available to any party other than to the company and its employees for internal business use, or to the subscriber who is the subject of that information, unless the company has received specific written authorization from the subscriber to make the data available.

(c) Written permission from the subscriber shall not be required for the systems conducting system-wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subsection (a) above.

(d) For purposes of this provision, a Class IV cable communications channel means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the communications system.

**Subd. 20. Minimum Coverage.** The cable system operated by Grantee shall deliver satisfactory television signals subject to the must-carry requirements of the FCC.

**Subd. 21. Performance Bond.**

(a) During the term of the franchise, and at all times thereafter until Grantee has liquidated all of its obligations under the franchise, the Grantee shall furnish a bond to the City in the amount of Twenty Thousand Dollars (\$20,000.00) in a form and with such sureties as are reasonably acceptable. The bond must be conditioned upon the faithful performance by the Grantee according to the terms of the franchise. The City may, from year to year, reduce the amount of the bond.

(b) In the event the Grantee fails to comply with the franchise, or any applicable law, ordinance or regulation there shall be recoverable jointly and severally from the principal and surety of the bond any actual damages or loss suffered by the City as a result, including the full cost of removal of any property of the Grantee, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, and further guaranteeing payment by the Grantee of claims, liens and taxes due the City which arise by reason of the construction, operation, or maintenance of the system.

(c) The Grantee shall be given written notice of any franchise violation, or other unsatisfied obligation giving rise to City's right to make a claim under the bond. If the violation is not cured or obligation satisfied within thirty (30) days, the City may make a claim pursuant to the bond. Nothing herein shall limit Grantee's right to seek judicial review of the City's determination that a violation or unsatisfied obligation occurred, or was not cured within thirty (30) days.

(d) Any action with respect to the performance bond shall not constitute an exclusive remedy nor limit any other right. The City's rights pursuant to the bond are in addition to all other rights whether reserved by this franchise or authorized by law.

**Subd. 22. Forfeiture of Franchise.**

(a) In addition to all other rights and powers pertaining to the City by virtue of this franchise or otherwise, but subject to federal law, the City reserves the right to terminate and cancel this franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:

(1) Violates any provision of this franchise, or any rule, order or determination of the City or City Council made pursuant to this franchise, except where such violation is without fault or through excusable neglect;

(2) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;

(3) Attempts to dispose of any of the facilities or property of its cable system business to prevent the City from purchasing same, as provided for herein;

(4) Attempts to evade any of the provisions of this franchise, or practices any fraud or deceit upon the City.

(b) Such termination and cancellation shall be by resolution duly adopted after thirty (30) days written notice of violation to the Grantee, and shall in no way affect any of the City's rights under this franchise, or any provision of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by the City Council shall be conclusive.

Provided, however, that before this franchise be terminated and cancelled under this section, the Grantee must be provided with an opportunity to be heard at a public hearing before the City Council and must receive at least a thirty-day period to remedy any violation of this agreement.

(c) City's Right of Intervention. The Grantee agrees not to oppose intervention by the City in any suit or proceedings to which the Grantee is a party.

(d) Further Agreement and Waiver by Grantee. The Grantee agrees to abide by all provisions of this franchise, and further agrees that it will not at any future time set up as against the City or the City Council the claim that the provisions of this franchise are unreasonable, arbitrary, or void.

**Subd. 23. Franchise Renewal.** Subject to the provisions of federal and/or state law, the franchise granted under this ordinance is renewable at the application of the Grantee, its lawful successors or assignee for such period of time, not to exceed 15 years, as the Council and the applicant may agree upon by negotiation.

**Subd. 24. Severability.** If any section subdivision, paragraph, sentence, clause or phrase of this ordinance or any part thereof, is for

any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance, or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

**Subd. 25. Acceptance.** Before this ordinance shall be in force or take effect, the Grantee shall accept the same by filing with the City Clerk of the City of Hibbing within thirty (30) days of approval by the City Council, its written acceptance consenting to the terms and conditions hereof, and agreeing to perform all acts and things required and agreed to be done by the Grantee. Failure on the part of the Grantee to timely file its acceptance shall render this ordinance null and void. The Grantee, by the acceptance of this ordinance, specifically agrees that failure on its part to comply with any and all of the terms and conditions of this ordinance shall constitute grounds for forfeiture, and that failure of the City of Hibbing to forfeit the rights and privileges herein granted for breach of any of the conditions and agreements hereof shall not in any way operate as a waiver of its rights so to do, and that lapse of time shall not create an estoppel of its rights so to do.

**Subd. 26. Additional Rights of the City**

(a) The City Council of the City of Hibbing, shall have the right:

(1) To make such rules and regulations as may be required to secure adequate and proper service, and to provide sufficient accommodations for the public.

(2) The Grantee shall not issue any capital stock on account of the franchise, or the value thereof, and the Grantee shall have no right to receive, upon a condemnation proceeding brought by the City, to acquire the public utility using such franchise, any return on account of the franchise, or its value.

(3) The City may require the placing underground, or in any other safe or convenient position, all system lines or wires.

(4) No Abandonment. The Grantee shall not abandon any cable communications service or any portion thereof without having given three months prior written notice to the City. The Grantee shall not abandon any cable communications service or any portion thereof without compensating the City for damages resulting to it from such abandonment.

(5) Upon termination or forfeiture of the franchise, the Grantee shall remove its cable, wires, and appliances from the streets, alleys, and public places within the City of Hibbing if the City so request. If the Grantee fails to remove said cable, wires and appliances within ninety (90) days, the City may cause the same to be done and Grantee or its surety shall pay for said removal.

**Subd. 27. Effective Date.** Notice of this ordinance shall be published in the official paper of the City of Hibbing. This ordinance shall take effect after receipt of written acceptance by the Grantee as provided above.

Source: Ordinance No. 361, 2nd Series  
Effective Date: 4-9-2009

(Sections 2.72 through 2.98, inclusive, reserved for future expansion.)

**SEC. 2.99. VIOLATION A MISDEMEANOR.** Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

Source: City Code  
Effective Date: 9-1-75