

CITY OF COMFREY

ORDINANCE NO. 196

**AN ORDINANCE ADOPTING THE COMFREY CITY CODE;
PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES;
PROVIDING FOR THE PRESERVATION OF CERTAIN RIGHTS;
PROVIDING FOR A PENALTY FOR VIOLATION OF THE COMFREY CITY CODE;
AND PROVIDING FOR THE PUBLICATION OF
THE COMFREY CITY CODE**

THE CITY COUNCIL OF COMFREY, MINNESOTA, ORDAINS:

Section 1. **Adoption of Code.** This ordinance, consisting of Chapters 1 through 12, inclusive, enacts the Code of Ordinances of the City of Comfrey, to be known as the Comfrey City Code, as the same is printed and attached hereto for purposes of enactment in this ordinance.

Section 2. **Repeal of Ordinances.** All ordinances heretofore passed and adopted by the City Council of the city of Comfrey are hereby repealed, except the following ordinances which are special or limited in application or which are otherwise retained in their original form and renumbered and made part of the Comfrey City code as specified:

<u>Ordinance No.</u>	<u>Section of Comfrey City Code</u>
Ordinance #132	5.02
Ordinance #185	5.02
Ordinance #151	5.04
Ordinance #163	11.03
Ordinance #192	11.03

Section 3. **Effect of Codification on Retained Ordinances.** The ordinances listed for retention and renumbering as stated in Section 2 are hereby confirmed and ratified in all respects, and their renumbering for purposes of inclusion in the Comfrey City Code shall not operate to change their effect in any respect.

Section 4. **Preservation of Rights.** The repeal of any ordinance or portion thereof by Section 2 shall not affect or impair any act done or right vested or accrued and any proceeding, suite or prosecution had or commenced shall remain in full force and effect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed by Section 2 or altered by the

Comfrey city code shall be discharged or affected by such repeal or alteration, but prosecutions and suits for such offenses, liabilities, penalties and forfeitures shall be instituted and proceeded in all respects as if such prior ordinances or parts thereof had not been repealed or altered.

Section 5. Violations and Penalty. Any person violating any provision of the Comfrey City code shall be guilty of such an offense and subject to such penalty as is provided in the applicable provisions of the Comfrey City Code.

Section 6. Publication of Code. The Comfrey City Code, together with such tables, indexes, supplements, appendices and other material as the City Council may designate, shall be published in book, loose leaf or other suitable form and shall be made available in substantial quantities for general distribution to the public. A summary of this ordinance and a notice that copies of the Comfrey City Code are available at the office of the City Clerk shall be published forthwith in the official newspaper of the City for two successive weeks.

Section 7. Effective Date. This ordinance, and the Comfrey City Code enacted by it, shall become operative and effective upon passage and publication as required in Section 6.

Adopted by the City Council this 4th day of March, 2024.

COMFREY CITY CODE

(2023)

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CHAPTER 1

GENERAL PROVISIONS

CITATION AND PURPOSE

1.01 **Citation.** This code, which represents a revision and codification of the ordinances of the City of Comfrey, Minnesota, shall be known as the “Comfrey City Code” and may be referred to by that name in all proceedings and actions. Reference to a portion thereof may be by chapter, section or subsection by using the following symbols:

For chapter: “Ch.” Plus the chapter number;

For section: “Sec.” plus the section number;

For subsection: Indicating section as above, immediately followed by subsection number in parentheses.

1.02 **Purpose.** It is the intention of the Council that this code will serve as a modernized and streamlined version of the ordinances of the City, presented in an orderly manner, with obsolete and unneeded ordinances and portions thereof deleted.

EFFECT OF ORGANIZATION AND IDENTIFYING DESIGNATIONS

1.03 **Organization and Designation of a Part of Code.** The organization of this code is an integral part thereof, and chapter, article and sub-article titles, section numbers and section headnotes are hereby made a part of this code, and may be amended and revised in the same manner as are the provisions of this code.

1.04 **Effect of Organization and Designation.** The organization of this code and chapter, article and sub-article titles, section numbers and section headnotes may be considered in ascertaining the intent of the City council in enacting provisions of this code, but in case of conflict, the provisions of any section control over organization and designations, and specific designations control over general designations.

1.05 **Cross References, Table of Contents, Appendix and Index.** Cross references, the Table of Contents, all Appendixes, the Index and other supplemental materials not expressly made a part of this code are included merely to assist the user of the code and do not form any part of it.

CONSTRUCTION OF PROVISIONS

1.06 **Construction of Words and Phrases.** In construing this code, the following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the City council, or be repugnant to the context of the relevant provisions of this Code:

(1) Words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have

acquired a special meaning or are defined in this code are construed according to such special meaning or definition.

- (2) The singular includes the plural, and the plural includes the singular.
- (3) Words in the masculine, feminine or neuter gender shall include all other genders.
- (4) Words used in the past or present tense include the future.
- (5) General words are restricted in meaning by particular words.

1.07 **Construction of May and Shall.** As used in this code, “shall” is always mandatory and “may” is permissive.

1.08 **Grammar and Punctuation.** Grammatical errors shall not vitiate any provision of this code. A transposition of words and clauses may be resorted to when a sentence is without meaning as it stands. Punctuation shall not control over the intention of the City Council in the enactment of a provision. Words and phrases which do not conflict with the obvious purpose and intent of a provision nor in any way affect its scope and operation may be added when necessary to the proper interpretation of the provision.

1.09 **Irreconcilable Provisions.** Provisions are to be construed so that effect may be given to each. In case of conflict, they shall be construed as follows, in the priority listed:

(1) If a special provision is in irreconcilable conflict with a general provision, the special provision will prevail and be construed as an exception to the general provision unless the general provision has been enacted later and shows a manifest intention of the Council that the general provision shall prevail.

(2) If enacted at different times, the latest in date of enactment will prevail.

1.10 **Amendments.** This code may be amended by subsequent ordinances. Amendments shall be given the same force and effect from the date which they become effective as is given to the original provisions of this code. Amendments shall be construed in accordance with their manifest intent of the Council in their enactment when lawfully enacted even though the amendments are irregular or deficient for some reason in the manner in which they amend this code.

DEFINITIONS OF WORDS AND PHRASES

1.11 **Definitions.** When used in this code, the following words, terms and phrases shall have the meanings given to them in this section, except as further defined in relation to specific provisions of this code, or unless another intention clearly appears:

- 1) “City” means the City of Comfrey, Brown and Cottonwood Counties, Minnesota.
- 2) “Code” means the Comfrey City Code as amended.
- 3) “Mayor” means the mayor of the City of Comfrey, Brown and Cottonwood Counties, Minnesota, and in his absence, this shall mean the acting mayor who is appointed annually at the first Council meeting of each year.

- 4) "Clerk-Treasurer" means the clerk-treasurer of the City of Comfrey, Brown and Cottonwood Counties, Minnesota.
- 5) "Council" means the City Council of the City of Comfrey, Brown and Cottonwood Counties, Minnesota, composed of the mayor and four members of the Council, all elected as required by law.
- 6) "Person" means any natural person of either sex, a co-partnership, a corporation, an association of person, and an agent or manager of any of the aforesaid.

SEVERABILITY: EFFECT OF REPEALS

1.12 **Severability of Provisions.** Every chapter, section, subsection or part thereof, of this code shall be severable. If any part of this code, or a chapter, section, subsection or other part, shall be declared invalid or is otherwise severed, the remaining provisions thereof shall remain valid, unless the Court finds the remaining valid parts thereof to be so essentially and inseparately connected with, and so dependent upon, the void parts that the Court cannot presume the Council would have enacted the remaining valid parts, or, standing alone, said remaining parts thereof are incomplete and are incapable of being executed in accordance with the intent of the Council.

FORM OF GOVERNMENT

1.13 **Optional Plan A In Effect.** In accordance with Minnesota Statutes Sections 412.541 to 412.591 and other applicable provisions of law, and an election had as required thereunder, the city shall be governed under the plan of government known in such statutes as the Optional Plan A. As provided by Statute, the city shall be governed by the City council composed of the mayor and four members of the Council, all elected as required by law. Three members of the Council present shall constitute a quorum for the transaction of business. The office of clerk-treasurer shall be appointed by the Council, all as provided in the Statutes.

CHAPTER 2
ADMINISTRATIVE PROVISIONS, CITY COUNCIL,
EMPLOYEES

NAME

2.01 The City of Comfrey, in the Counties of Brown and Cottonwood, and State of Minnesota, shall continue to be a municipal corporation under the name and style of City of Comfrey, with the same boundaries as now are or hereafter may be established.

BOUNDARIES

2.02 The subdivision of land included in and constituting the City of Comfrey, Minnesota, shall be as follows, to wit:

Steinmetz Addition to Comfrey, in the North half (N1/2) of the Northeast Quarter (NE1/4) of Section Number Three (3), Township Number One Hundred Seven (107), Range Number Thirty-four (34), in the County of Cottonwood, State of Minnesota, consisting of Lots 1 through 14.

Lot Number Two (2) of Southeast Quarter of Southeast Quarter (SE1/4SE1/4), Section Number Thirty-four (34), Township Number One Hundred Eight (108), Range Number Thirty-four (34), Brown County, Minnesota, per auditor's plat thereof, dated May 1, 1963, and filed in the office of the Register of Deeds of Brown County, Minnesota, and bearing file number 162051, and containing 14,773 acres.

Commencing at the northeast corner of Section Three (3), Township One Hundred Seven (107), Range Thirty-four (34), Cottonwood County, Minnesota, thence south along the east line of said section a distance of 706 feet, thence west and parallel with the north line of said section a distance of 636 feet, thence north and parallel with the east line of Block Two (2) of Liberty Park Addition to the Village of Comfrey, Minnesota, a distance of 400 feet, as a starting point and place of beginning; thence east and parallel with the north line of said section a distance of 204 feet; thence north and parallel with the east line of Steinmetz's Addition to said Village of Comfrey a distance of 273 feet; thence west and parallel with the north line of said section a distance of approximately 135.75 feet; thence south and parallel with the east line of said Steinmetz's Addition, a distance of 150 feet; thence west and parallel with the north line of said section a distance of 68.25 feet; thence south and parallel with the east line of said Steinmetz's Addition a distance of 123 feet to the point of beginning.

Commencing at the northeast corner of the Northeast Quarter (NE1/4) of Section Three (3), Township One Hundred Seven (107) North of Range Thirty-four (34) West of the Fifth Principal Meridian in Cottonwood County, Minnesota; thence south along the east line of said Northeast Quarter (NE1/4), 33 feet; thence west parallel with the north line of said Northeast Quarter (NE1/4) 667.75 feet, this being the point of beginning; thence running due south 150 feet; thence running due east 100 feet; thence running due north 150 feet; thence running due west 100 feet to the point of beginning, less and except the south 50 feet thereof.

Lot One (1) of the Southeast Quarter of the Southwest Quarter (SE1/4SW1/4), Section Thirty-four (34), Township One Hundred Eight (108), Range Thirty-four (34), Brown County, Minnesota, consisting of .5 acres.

That part of the North One-half of the Northeast Quarter (N1/2NE1/4), Section Three (3), Township One Hundred Seven (107), Range Thirty-four (34), Cottonwood County, Minnesota, described as follows, to-wit: Beginning at a point 50 feet west of the northwest corner of Steinmetz Addition to the City of Comfrey, along the north line of said Section Three (3); running thence west parallel with said line a distance of 150 feet; thence north a distance of 150 feet, to the place of beginning.

All that part of the Northwest Quarter of the Northwest Quarter (NW1/4NW1/4), Section Two (2), and the Northeast Quarter of the Northeast Quarter (NE1/4NE1/4), Section Three (3), Township One Hundred Seven (107), Range Thirty-four (34), Cottonwood County, Minnesota, described as follows, to-wit: Beginning at the northwest corner of said Section Two (2); thence north 89° 35' 30" east along the north line of said Section Two (2) for 65.41 feet, being point 90° northwesterly at 50 feet from the centerline of the former Chicago & Northwestern Railway Transportation Company's main tract; thence south 39° 27' east parallel to the said railroad centerline for 939.26 feet; thence south 88° 10' west for 126.24 feet; thence north 39° 27' west parallel with the former railroad centerline and distant 50 feet thereof for 98.49 feet to the north line of said Section Three (3); thence south 89° 52' 30" east along the north line of said Section Three (3) for 63.83 feet to the point of beginning, subject to all highway and road easements of record.

That part of the West One-half of the Northwest Quarter (W1/2NW1/4), Section Two (2), Township One Hundred Seven (107), Range Thirty-four (34), West of the Fifth Principal Meridian, described as follows, to-wit: Commencing at the northwest corner of the Northwest Quarter (NW1/4) of said Section Two (2); thence south 666 feet; thence east 510 feet to the railroad right-of-way; thence in a northwesterly direction to the point of beginning, Cottonwood County, Minnesota.

That part of the Northwest Quarter of the Northeast Quarter (NW1/4NE1/4) of Section Three (3), Township One Hundred Seven (107) North, Range Thirty-four (34) West, Cottonwood County, Minnesota, described as follows:

Beginning at the North Quarter Corner of said Section Three (3); thence South 89 degrees 53 minutes 35 second East, an assumed bearing, along the north line of said Northeast Quarter (NE1/4) of Section Three (3) a distance of 1174.00 feet to the Northerly prolongation of the west line of Liberty Park Addition according to a plat of record; thence South 00 degrees 06 minutes 25 seconds West along said prolongation and said west line 270.00 feet; thence North 89 degrees 53 minutes 35 seconds West 1176.76 feet to the west line of said Northeast Quarter (NE1/4) of Section Three (3); thence North 00 degrees 41 minutes 35 seconds East along said west line of the Northeast Quarter (NE1/4) 270.01 feet to the point of beginning, containing 7.29 acres, more or less, and being subject to easements of record in said county and state.

That part of the Southwest Quarter (SW1/4) Section Thirty-four (34), Township One

Hundred Eight (108), Range Thirty-four (34), Brown County, Minnesota, described as follows:

Commencing at a point 782 ft. North of the SE corner of the SW $\frac{1}{4}$, Sec. 34, Twp. 108, Range 34, Brown County, Minnesota, on the East line of said SW $\frac{1}{4}$, thence West along the North line of Lot 1 of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 34 a distance of 165 ft., thence North on a line parallel to the East line of said SW $\frac{1}{4}$ a distance of 30 ft., thence East 165 ft. to the East line of said SW $\frac{1}{4}$, thence South along the East line of said SW $\frac{1}{4}$ a distance of 30 ft. to the point of beginning; and

Beginning at the SE corner of the SW $\frac{1}{4}$, Sec. 34, Twp. 108, Range 34, Brown County, Minnesota, thence North 650 ft., thence West 165 ft. to the SW corner of Lot 1 of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 34, being the actual point of beginning, thence continuing on the same course West 12 ft., thence North on a line parallel to the West line of said Lot 1 a distance of 162 ft., thence East on a line parallel to the North line of said Lot 1 a distance of 12 ft., thence South 162 ft. to the point of beginning.

2.03

URBAN AND RURAL SERVICE DISTRICTS

Subsection 1. Establishment of Taxing Districts. The city is hereby divided into an Urban Service District and Rural Service District, pursuant to M.S. § 272.67, as it may be amended from time to time, for the purpose of all municipal property taxes, except those levied for the payment of bonds and judgments and interest thereon.

Subsection 2. URBAN SERVICE DISTRICT. The Urban Service District shall include all property within the limits of the city, except those set forth as the Rural Service District.

Subsection 3. RURAL SERVICE DISTRICT. The Rural Service District is comprised as follows:

(A) The Rural Service District shall include only unplatted lands which need not be contiguous to one another, as in the judgment of the Council are rural in character, and are not developed for commercial, industrial, or urban residential purposes and for these reasons are not benefitted to the same degree as other lands by municipal services financed by general taxation.

(B) The rural service district shall be comprised of the following parcels of land within the city:

Parcel ID No. 5.34.0.5.40

Parcel ID No. 5.34.9.6.43

Parcel ID No. 5.35.12.3.30

Parcel ID No. 5.34.9.4.44

Subsection 4. BENEFITS TAX RATIO. The city hereby determines that the ratio between the benefits resulting from tax supported municipal services to parcels of land of like market value, situated in the Rural Service District and in the Urban Service District, respectively, is .3 to 1.

Subsection 5. MODIFICATION OF DISTRICTS AND BENEFITS RATIO. By amendment of this Section, land may be added to or removed from the Rural Service Taxing District and the benefit ratio may be changed. Whenever any parcel of land included in the Rural Service District is platted in whole or in part; or whenever application is made for a permit for construction of a commercial, industrial, residential or agricultural building or improvement; or whenever the improvement or building is commenced without a permit the governing body shall transfer the parcel or part thereof from the Rural Service District to the Urban Service District.

Subsection 6. SERVICES PROVIDED. Except for fire, police, and planning services, the City of Comfrey will provide no other services to the lands in the rural service district beyond those customarily provided by the township in which the lands are located.

2.04 SALARIES AND FEES

Subsection 1. Pursuant to M.S.A. Section 415.11, the salary of the Mayor of the City of Comfrey, Brown County, Minnesota, shall be fixed at a sum of \$1,920.00 per year, payable semi-annually.

Subsection 2. Pursuant to M.S.A. Section 415.11, the members of the City Council shall each receive a salary of \$1,320.00 per year, payable semi-annually.

Subsection 3. Both the Mayor and the Councilmen shall receive the sum of \$25.00 for each special meeting they attended in addition to the regular meetings, payable semi-annually.

Subsection 4. The salaries of the Mayor and the Councilmen as listed above shall go into effect after the next succeeding municipal election, and will be effective upon the installation of the councilmen elected at said election.

CLERK-TREASURER

2.05 Pursuant to the provisions of Minn. Stat. §412.591, the Offices of City Clerk and City Treasurer shall be combined into the office of Clerk-Treasurer. The financial affairs of the City of Comfrey shall be audited on an annual basis by a certified public accountant in accordance with minimum procedure prescribed by the state auditor.

MAYORAL EMERGENCY AUTHORITY

2.06 The Mayor of the City of Comfrey may, exercising discretion and considering the needs of the City of Comfrey and its inhabitants, dispatch equipment and personnel as considered necessary if a danger of fire, hazard, casualty, or other similar occurrences exist outside the limits of the City of Comfrey and by its suddenness would be

impractical for the City Council to authorize such dispatch of equipment and personnel to combat that emergency or disaster. All provisions for compensation of personnel, rental of equipment, liability insurance coverage, workers' compensation insurance, and other matters pertaining to the City of Comfrey, its equipment, and personnel apply in each case as if specifically authorized and directed. The Mayor shall end the use of equipment and personnel when the need no longer exists or earlier at the mayor's discretion if it appears to be in the best interest of the City of Comfrey.

2.07 BASIC PERSONNEL POLICY

Subsection 1. It is the purpose of this Section to establish a uniform and equitable system of personnel administration for employees of the City. The city council may supplement this Section by approving a Personnel Policy, provided that such policy does not conflict with this Section.

Subsection 2. Except as otherwise specifically provided, this policy applies to all employees of the City except the following:

- a. All elected officials;
- b. The city attorney;
- c. Members of city boards, commissions and committees;
- d. Consultants;
- e. Volunteer fire fighters;
- f. Emergency employees;
- g. Other employees not regularly employed in permanent positions.

Subsection 3. Every appointment to municipal service shall be made by the City Council on the basis of merit and fitness for the position. When required by law or by the City Council, merit and fitness shall be ascertained by written, oral, or other examinations designed to evaluate the ability of the candidate to discharge the position for which the examination is held.

Subsection 4. The probationary period is an integral part of the selection process and shall be utilized for observing the employee's work, for securing the most effective adjustment of the employee to the position, and for rejecting any employee whose performance does not meet the required work standards. Every original appointment and every promotional appointment is subject to a probationary period of six months after appointment. The City Council may terminate a probationary employee at any time during the probationary appointment if in the opinion of the City Council the working test indicates that the employee is unable or unwilling to perform the duties of the position satisfactorily or that his habits and dependability do not merit continuance in the position. The employee so terminated shall be notified in writing of the reasons of the termination. A permanent employee terminated during the probationary period from a position to which he has been promoted shall be reinstated to a position in the class from which he was promoted unless he is discharged from the city service as provided in this

Section. Immediately prior to the expiration of the probationary period, the City Council shall evaluate whether or not the services of the employee have been satisfactory and whether or not the employee will be continued. An employee who has completed the period of probationary service and who has not received a written notice from the City council that his services are terminated shall be considered to have successfully completed the probationary period and attained the status of a permanent employee.

Subsection 5. Employees of the city shall be compensated according to the wage set by the City Council, and in addition shall receive reimbursement for official travel or other expenses which may be allowed for the conduct of official business. Whenever an employee works for a period less than the regularly established number of hours a day, days a week, or weeks a month, the amount paid shall bear the same relationship to the full-time rate for the position as the time actually worked bears to the time required for full-time service. Employees shall be paid on such dates as may be established by the City Council.

Subsection 6. Except as otherwise established by the City council, the regular work week for employees is five eight-hour work days, Monday through Friday.

Subsection 7. Every permanent employee, upon completion of one year of service, shall be eligible for paid vacation. A full two weeks of vacation is available after one year of service. A full three weeks of vacation is available after eight years of service. A full four weeks of vacation is available after fifteen years of service. Such vacation leave must be taken during the year immediately following the year for which it was earned and cannot be accrued into a succeeding year or in an amount greater than 14 days. Vacation leave may be used on such dates as is approved by the City Council or Supervisor or may be paid as additional compensation in lieu of taking such leave. In the event an employee terminates employment prior to taking vacation leave accrued for a prior year of service, and such employee leaves municipal service in good standing after giving proper notice of such termination of employment, the employee shall be compensated for vacation leave accrued and unused to the date of separation.

Subsection 8. Every probationary and permanent employee is entitled to sick leave with pay at the rate of one-half day for each calendar month of full time service during the first calendar year during which the employee is employed. Sick leave may not be accumulated into a successive calendar year in excess of 240 hours for full time employees or part time employees in excess of an amount proportional to the average hours worked in one week. Sick leave may be granted to employees not on personal leave when the employee is unable to perform work duties due to illness or disability of the employee, employee's spouse or the employee's children, or the necessity for medical, dental, optical or chiropractic care for the employee, the employee's spouse, or the employee's children, or childbirth or pregnancy disability, or exposure to contagious disease where such exposure may endanger the health of others with whom the employee would come in contact in the course of performing work duties. To be eligible for sick leave with pay an employee shall report as soon as possible to the City Council the reason for his

absence and if the absence is of more than three days' duration, submit a doctor's statement for any absence. Using or claiming sick leave for a purpose not authorized hereunder may be cause for disciplinary action. Sick leave may also be granted for a maximum of five days per year for a death of any employee's spouse, child, father, mother, step-parent, step-child, brother, sister, step-brother, step-sister, grandparent, grandchild, brother-in-law, sister-in-law, spouse's parent or member of employee's immediate household. In the event an employee terminates employment prior to using accrued sick leave, and such employee leaves municipal service in good standing after giving proper notice of such termination of employment, the employee shall be compensated for one-half of sick leave accrued and unused to the date of separation.

Subsection 9. Every employee to whom Minnesota Statutes Section 192.26 or 192.261 applies, or to whom Minnesota Statutes Section 181.9445 through 181.9448 applies, is entitled to the benefits afforded by those sections in accordance with policies adopted by the City Council consistent with such statutes.

Subsection 10. The City Council may grant any permanent employee who has been employed for at least one year and worked at least 1250 hours in the previous year a leave of absence without pay for a period not exceeding 12 weeks except that it may extend such leaves to a maximum period of one year in case the employee is disabled or where extraordinary circumstances, in its judgment, warrant such extension. No vacation benefits shall accrue during a leave of absence without pay, nor shall paid sick leave be granted to persons on unpaid leave.

Subsection 11. When an employee is called for jury duty or serves as a witness on behalf of the city in a case in which the City is a party, the employee is entitled to compensation from the City equal to the difference between his regular pay and the amount received as a witness.

Subsection 12. Every regular employee, when working under conditions where a break period is practicable, shall be granted a 15 minute break period in each half of the employee's shift.

Subsection 13. The following calendar days and such other days as the City Council may fix are paid holidays: New Year's Day, Martin Luther King's birthday, Presidents Day, Memorial Day, Independence Day, Juneteenth, Labor Day, Veteran's Day, Thanksgiving Day, the Friday after Thanksgiving, Christmas Day and one personal leave day. All employees in regular positions are entitled to time off with full pay on holidays. The City Clerk's office shall be closed for business on each such holiday, but employees may be required to work on paid holidays when the nature of their duties or other conditions require. An employee required to work on a holiday shall receive either another day off within thirty (30) days thereafter or 1 ½ time overtime pay for the holiday worked. When a holiday falls on a Sunday, the following Monday shall be the observed holiday. When a holiday falls on a Saturday, the preceding Friday shall be the observed holiday. Any employees scheduled to work on such holiday shall receive

another day off within thirty (30) days thereafter or shall receive 1 ½ times the employee's regular hourly rate for the holiday worked.

Subsection 14. Any employee wishing to leave the municipal service in good standing shall file with the City Council at least 30 days before leaving a written resignation stating the effective date of resignation and the reason leaving. Unauthorized absence from work for a period of three working days may be considered by the City Council as a resignation.

Subsection 15. After at least two weeks' notice to the employee, the City council may lay off any employee whenever such action is necessary because of shortage of work or funds, the abolition of a position, or changes in organization. No permanent or probationary employee shall be laid off while there is a temporary employee serving in the same class of position for which the permanent or probationary employee is qualified, eligible and available.

Subsection 16. City employees shall be subject to disciplinary action for failing to fulfill their duties and responsibilities, including observance of work rules adopted by the City council. It is the policy of the City to administer disciplinary penalties without discrimination. Every disciplinary action shall be for just cause and the employee may demand a hearing with respect to any disciplinary action which he believes is either unjust or disproportionate to the offense committed, which hearing will be held by the City Council.

Subsection 17. Except for severe infractions, disciplinary action against any employee shall be progressive and follow the steps listed below in numerical order:

1. Oral reprimand.
2. Written reprimand. A reprimand shall state that the employee is being warned for misconduct; describe the misconduct; describe past actions taken to correct the problem; urge prompt correction or improvement by the employee; and outline future penalties should the problem continue. The employee shall be given a copy of the reprimand and sign the original acknowledging that he has received the reprimand. The signature of the employee does not mean that he agrees with the reprimand. The reprimand shall be placed in the city's file on the employee but shall be removed from the file after one year from the date of issuance if there has been no subsequent reprimand and no other disciplinary action has been instituted.
3. Suspension without pay. Prior to the suspension or as soon thereafter as possible, the employee shall be notified in writing of the reason for the suspension and its length. Upon the employee's return to work, he shall be given a written statement outlining further disciplinary actions should the misconduct continue. An employee may be suspended pending investigation of an allegation.

4. Dismissal. The City Council may dismiss any employee after the employee is given a notice in writing at least five work days before the effective date of the dismissal. The notice shall contain the reasons for the dismissal; the employee's rights under these rules and the veterans' preference law if he is a veteran; and a statement indicating that the employee may respond to the charges both orally and in writing and that he may appear personally before the City Council. In any case of suspension or dismissal, the employee shall be granted a hearing before the Council if the employee submits a written request for such a hearing to the Council within five working days of notification of the action taken. The hearing shall be held within ten working days from the date the request is filed unless the City and the employee agree on an earlier or later date. If the disciplinary action involves the removal of a veteran, the hearing shall be held in accordance with Minnesota Statutes Section 197.46.
5. An employee may be dismissed immediately for gross misconduct. Notice of the reasons for dismissal, the employee's rights under these rules and the veteran's preference law, and a statement indicating that the employee may respond to the charges orally and in writing and may appear personally before the City Council, shall be delivered to the employee, in writing, at the earliest possible date.

Subsection 18. Every appointed employee of the City shall automatically be retired upon reaching the age of 70 years, except if the City Council finds that the interest of the City will best be served by allowing a person to remain in the employ of the City after reaching 70 years of age because his services are especially needed or his replacement would be especially difficult.

Subsection 19. No person shall knowingly make any false statement, certificate, mark, rating, or report in regard to any test, certificate, or appointment held or made under the city personnel system or in any manner commit or attempt to commit any fraud preventing the impartial execution of the provisions of this Section. No person seeking employment to or promotion in the municipal service shall either directly or indirectly give, render, or pay any money, service, or other valuable consideration to any person or on account of or in connection with his test, appointment, or promotion, or proposed appointment or promotion. No person shall be employed, promoted, demoted, or discharged by the city or in any way favored or discriminated against because of political opinions or affiliations, race, color, national origin, religion, sex, sexual orientation, age, marital status, status with regard to public assistance or disability, or because of the exercise of rights under provisions of the Public Employment Labor Relations Act, Minnesota Statutes Sections 179.61 to 179.76.

Subsection 20. Any person violating any provision of this Section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or imprisonment in the county jail for not more than 90 days, or both.

Subsection 21. At the discretion of the City Council, and when negotiated as part of the compensation upon appointment of an employee or renegotiation of wages, the City Council may provide for medical insurance coverage and such other fringe benefits as it deems appropriate.

VOLUNTEER DEPARTMENTS (FIRE, FIRST RESPONDER)

2.08 Fire Department.

- 1) For the protection of lives and property of the citizens of the City of Comfrey, there is hereby created a Volunteer Fire Department, to be known as the “Comfrey Fire Department.”
- 2) Such Fire Department shall consist of not more than thirty (30) members.
- 3) There being at this time a Fire Department in existence in this City, all of the members and officers shall be considered as charter members thereof, and the present officers thereof shall hold their respective offices until after the next annual meeting of said Department.
- 4) All officers of said Department shall be elected at the annual meeting thereof, on the last Tuesday in December of each year and they shall hold their respective offices for one year, and until their successors have been elected and qualified.
- 5) The officers of said Department shall be:
A Chief and one Assistant Chief, one or more Captains, a President, a Vice-President, a Secretary, and a Treasurer.
- 6) The Chief and the Assistant Chief shall be eligible to the offices of President and Vice-President.
- 7) The Chief shall be the Fire Marshall of the City of Comfrey.
- 8) The Chief and his Assistant shall be subject to the approval of the Council.
- 9) The Department may create such other officers as it deems necessary for the efficiency of the Department.
- 10) The Department shall make all their own regulations and by-laws for the government of the same, and shall report to the council the names of all members of the Department and the regulations and by-laws adopted, at least once a year.
- 11) The Department may, whenever they decide to do so, organize a Relief Association in accordance with the laws of the State of Minnesota.
- 12) The Department is hereby authorized to answer fire calls in the surrounding country and calls to assist in neighboring cities, and for that purpose take what apparatus is necessary. When answering such calls, the members of the Department shall be considered as on duty as Comfrey Firefighters.

2.09 First Responders.

SUBSECTION 1 - FIRST RESPONDER SQUAD ESTABLISHED

There is hereby established in this city a volunteer first responder squad consisting of a Captain, an Assistant Captain, and not less than eight (8) first responder members.

SUBSECTION 2 - APPOINTMENT OF FIRST RESPONDER SQUAD CAPTAIN

The First Responder Squad Captain shall be elected by the members of the First Responder Squad, subject to approval by the City Council. The First Responder Squad Captain shall be elected for a one (1) year term, which election shall be held at the last regular meeting each year for the term commencing January 1st of the following year.

SUBSECTION 3 - DUTIES OF CAPTAIN

The First Responder Squad Captain shall be the administrative head of the First Responder Squad. In such position, it shall be the captain's duty to:

- Sub. 1. Recommend the management organization of the First Responder Squad, including, but not limited to, such matters as naming at least one assistant captain, determining how the First Responder Squad shall be organized and naming officers.
- Sub. 2. Have access to and be responsible for all apparatus and equipment necessary to carry out the duties of the First Responder Squad, including equipment shared with the Fire Department.
- Sub. 3. Make reports to the Council as directed by the Council.
- Sub. 4. Control work assignments so as to properly utilize the working forces of the First Responder Squad.
- Sub. 5. Insure the proper training of the members of the First Responder Squad. At least six (6) meetings of the First Responder Squad members shall be held each year. Such meetings shall include training drills. Records shall be kept of the names and the number of the members present at each meeting/drill, what each drill consists of, and any other pertinent information deemed necessary by the Council.
- Sub. 6. To perform such other functions as are necessary to properly administer the First Responder Squad.

SUBSECTION 4 - ASSISTANT CAPTAIN

In the absence, unavailability or disability of the Captain, the Assistant Captain shall perform all the functions and exercise all the authority of the Captain.

SUBSECTION 5 - APPOINTMENT AND PROMOTION

All appointments to and promotions within the First Responder Squad shall be made on the basis of merit and ability, and all members of the First Responder Squad shall be qualified to perform their administrative and First Responder Squad duties. The Captain shall prepare departmental regulations on personnel standards and procedure, if such are necessary, to accomplish these objectives. The Captain shall recommend appointment, promotion, suspension or removal of the members of the First Responder Squad, subject to the confirmation or approval of the Council.

SUBSECTION 6 - QUALIFICATIONS

The members shall be physically able to perform all required duties and not less than eighteen (18) years of age, and must as a minimum be currently licensed as First Responders in the State of Minnesota.

SUBSECTION 7 - INITIAL AND YEARLY PHYSICAL EXAMINATION

The Captain may require that each candidate, before they may become a member, must undergo a thorough physical examination by a licensed doctor of medicine and submit such doctor's written report thereof with the application for membership on the First Responder Squad. In addition to the initial physical examination, all First Responder Squad members may be required to undergo physical examination or physical testing on a yearly basis as may be established as part of department by-laws.

SUBSECTION 8 - BY-LAWS

The members of the First Responder Squad shall adopt such by-laws as are deemed necessary to govern the department, which by-laws shall only be effective when approved by the City Council.

SUBSECTION 9 - COMPENSATION

The members and officers of the First Responder Squad shall receive compensation as set from time to time by resolution of the City Council. The Captain shall certify and submit a quarterly report showing in detail the compensation to which each member is entitled for such quarter. No payment of compensation shall be paid to any member until such report is filed.

SUBSECTION 10 - LOSS OF MEMBERSHIP

To be in and remain in good standing in the First Responder Squad, each officer or member shall attend at least fifty percent (50%) of the scheduled meetings held in any one year in addition to the required bi-annual refresher training. In addition, any officer or member shall not be absent from three (3) consecutive drills or calls, unless such absence is excused by the Captain. The failure to so attend shall be deemed sufficient for removal of the member from the First Responder Squad. Members shall continue as members of the First Responder Squad during periods of good behavior, and may be removed by the Council only for cause after a hearing; however, the Captain shall have the authority to suspend a member pending such hearing. A member shall receive no pay while suspended.

SUBSECTION 11 - INTERFERENCE WITH FIRST RESPONDER SQUAD

It shall be unlawful for any person to give or make, or cause to be given or made an alarm without probable cause, or to neglect or refuse to obey any reasonable order of the Captain at the call, or to interfere with the First Responder Squad in the discharge of its duties. Any person violating this section shall be guilty of a misdemeanor.

2.10 Service Charges.

SUBSECTION 1

That the service charge hereafter specified is hereby imposed for emergency services, as follows:

Fire Call: \$500.00 1st hour, \$200.00 per hour for time in excess of 1 hour.

First Responder Call: \$100.00 per call, plus supplies and materials.

Such service charges may be changed or amended from time to time by resolution of the City Council.

SUBSECTION 2

Such service charge will be promptly billed to the recipient of such service, and will be due and payable 30 days after mailing of such bill. If such bill becomes past due, a notice of delinquency shall be mailed to such recipient of service. If such bill remains unpaid 30 days after a notice of delinquency is mailed, the City may use any lawful means to collect such service charge, including certifying the unpaid service charge for collection with real property taxes for recipients of service who own taxable real property, in the manner provided by law.

CHAPTER 3 ANIMALS

3.01 **Definitions.** As used in this Chapter, the terms defined in this section shall have the following meanings ascribed to them:

- A. Animal Control Officer means the person appointed to that position by the City Council of the City of Comfrey. The Animal Control Officer shall be primarily responsible for responding to domestic animal and non-domestic animal related problems and the enforcement of the Comfrey City Code and statutes.

- B. Cat means both male and female of the felidae species.

- C. Dog means both male and female of the canine species.

- D. Dangerous Dog means any dog that has:
 - (1) without provocation, inflicted substantial bodily harm on a human being on public or private property; or
 - (2) killed a domestic dog without provocation while off the owner's property; or
 - (3) been found to be potentially dangerous, and after the owner has been sent notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or other domestic dogs.

- E. "Domestic animals" shall mean those animals commonly accepted as domesticated household pets. Unless otherwise defined, such animals shall include dogs, cats, caged birds, ferrets, gerbils, hamsters, guinea pigs, domesticated rabbits, fish, non-poisonous, non-venomous and non-constricting reptiles or amphibians, and other similar animals.

- F. Non-domestic animals" shall mean those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety, and welfare of people. Unless otherwise defined, such animals shall include:
 - (1) Any member of the large cat family (family Felidae) including lions, tigers, cougars, bobcats, leopards and jaguars, but excluding commonly accepted domesticated house cats.

- (2) Any naturally wild member of the canine family (family Canidae) including wolves, foxes, coyotes, dingoes, and jackals, but excluding commonly accepted domesticated dogs.
 - (3) Any crossbreeds such as the crossbreed between a wolf and a dog, unless the crossbreed is commonly accepted as a domesticated house pet.
 - (4) Any member or relative of the rodent family including any skunk (whether or not de-scented), raccoon, or squirrel, but excluding those members otherwise defined or commonly accepted as domesticated pets.
 - (5) Any poisonous, venomous, constricting, or inherently dangerous member of the reptile or amphibian families including rattlesnakes, boa constrictors, pit vipers, crocodiles and alligators.
 - (6) Any other animal which is not explicitly listed above but which can be reasonably defined by the terms of this subpart, including but not limited to bears, deer, monkeys and game fish.
- C. Owner means any person owning, keeping, harboring or maintaining a dog or cat within the City. A dog or cat shall be deemed to be harbored if it is fed or sheltered for three days or more.
- D. Potentially dangerous dog means any dog that:
- (1) when unprovoked, inflicts bites on a human or domestic dog on public or private property; or
 - (2) when unprovoked, chases or approaches a person upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or
 - (3) has a known propensity, tendency or disposition to attack without provocation causing injury or otherwise threatening the safety of humans or other domestic dogs.

3.02 Running at Large Prohibited. It is unlawful for the owner of any dog to permit such dog to run at large. Any dog shall be deemed to be running at large with the permission of the owner unless it is on a durable leash secured to an object which it cannot move and on the premises of the owner, or on a leash and under the control of an accompanying person of suitable age and discretion, or effectively confined within a motor vehicle, building, or enclosure.

3.03 License Required. It is unlawful for the owner of any dog, three months of age or more, to fail to obtain a license therefor from the City.

3.04 **License Issuance, Term and Renewal.** All dog licenses shall be issued only upon presentation of a certificate issued by a veterinarian, licensed to practice veterinary medicine in the State of Minnesota, showing rabies and distemper vaccination as provided in Section 3.05. All licenses shall be effective for the lifetime of the dog. A nonrefundable fee of \$50.00, or a nonrefundable fee of \$25.00 if the dog is spayed or neutered, shall be paid with each application, unless a different fee is set by the Council in accordance with Section 3.06 of this Chapter. If the application is for an initial license for a neutered dog, a statement from a licensed veterinarian shall accompany the application stating that such dog has been neutered.

3.05 **Vaccination.** All dogs and cats kept harbored, maintained, or transported within the City shall be vaccinated at least once every three years by a licensed veterinarian for rabies, with a live modified vaccine, and distemper.

A certificate of vaccination must be kept, on which is stated the date of vaccination, owner's name and address, the animal's name (if applicable), sex, description and weight, the type of vaccine, and the veterinarian's signature. Upon demand made by the Clerk-Treasurer or a police officer, the owner shall present for examination the required certificate(s) of vaccination for the animal(s). In cases where certificates are not presented, the owner or keeper of the animal(s) shall have seven days in which to present the certificate(s) to the Clerk-Treasurer or police officer. Failure to do so shall be deemed a violation of this Section.

3.06 **Adoption of Fees.** All fees for the licensing, impounding and maintenance of dogs or cats, including penalties for late application, may be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such fees may from time to time be amended by the Council by resolution. A copy of the resolution setting forth currently effective fees shall be kept on File in the office of the City Clerk and open to inspection during regular business hours.

3.07 **Tag Required.** All licensed dogs shall wear a collar and have a tag firmly affixed thereto evidencing a current license. A duplicate for a lost tag may be issued by the City upon presentation of the receipt showing the payment of the duplicate license fee. Tags shall not be transferable, and no refund shall be made on any license fee because of leaving the City or death of the dog before the expiration of the license. It is unlawful for the owner of any dog to fail to have the license tag issued by the City firmly attached to a collar worn at all times by the licensed dog.

3.08 **Owner Obligation for Proper Care.** No owner shall fail to provide any dog or cat with sufficient good and wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering and with humane care and treatment. No person shall beat, treat cruelly, torment or otherwise abuse any dog or cat or cause or permit any dog or cat fight. No owner shall abandon any dog or cat.

3.09 **Animal Pound.** A City animal pound is established which shall be at such location either within or without the City as the City Council, by resolution, shall designate. The animal control officer shall attend to the maintenance of such pound and when requested shall file a report with the City Council relating to the operation of such pound. The pound shall be maintained in a clean and orderly manner.

3.10 **Impoundment.** Any dog found in the City without a license tag, or any dog running at large, or any dog or cat otherwise in violation of this Section, shall be placed in the Animal Pound, and an accurate record of the time of such placement shall be kept on each dog and cat. Every dog or cat so placed in the Animal Pound shall be held for redemption by the owner for at least five business days. Impoundment records shall be preserved for at least six months and shall show (1) the description of the dog or cat by specie, breed, sex, approximate age, and other distinguishing traits; (2) the location at which the dog or cat was seized; (3) the date of seizure, (4) the name and address of the person from whom any dog or cat three months of age or over was received; and, (5) the name and address of the person to whom any dog or cat three months of age or over was transferred. If unclaimed, such dog or cat shall be humanely destroyed and the carcass disposed of, unless it is requested by a licensed educational or scientific institution under authority of Minnesota Statutes, Section 35.71. Provided, however, that if a tag affixed to the dog or cat, or a statement by the dog's or cat's owner after seizure specifies that the dog or cat should not be used for research, such dog or cat shall not be made available to any such institution but may be destroyed after the expiration of the five-day period.

3.11 **Notice of Impounding.** Upon the impounding of any dog or cat, the owner shall be notified, or if the owner of the dog or cat is unknown, written notice shall be posted for five (5) days at the Comfrey Community Center/City Clerk's Office, which notice shall be in substantially the following form:

NOTICE OF IMPOUNDING DOG OR CAT

Date:

To Whom it May Concern:

I have this day taken up and impounded in the Animal Pound of the City of Comfrey a dog/cat described as follows:

Sex

Color

Breed

Approximate Age

Name of Owner

NOTICE IS HEREBY GIVEN that unless said dog or cat is claimed and redeemed on or before _____ o'clock __.m. on the _____ day of _____, _____ said dog or cat will be disposed of.

(Pound Master)

(Police Officer)

3.12 **Release From Animal Pound.** Dogs or cats shall be released to their owners, as follows:

- A. If such dog is owned by a resident of the City, after purchase of a license, if an unlicensed dog, and payment of the impounding fee, maintenance, and immunization fee.
- B. If such dog or cat is owned by a person not a resident of the City, after immunization of any such dog or cat for rabies, and payment of the impounding fee and maintenance.

3.13 **Adoption of Unredeemed Dogs and Cats.** If any dog or cat impounded pursuant to this section is not redeemed by its owner, it may be made available for adoption as a pet by and at the discretion of the animal control officer.

3.14 **Spaying or Neutering Required.** When a dog or cat not previously sterilized is sold or released for adoption by the animal control officer, the buyer or adopting party must:

- A. Sign a written agreement to have the dog or cat sterilized. If the dog or cat is less than six (6) months old, the buyer or adopting party shall agree to have the dog or cat sterilized by the age of six (6) months. If the dog or cat is more than six (6) months old, the buyer or adopting party shall agree to have the dog or cat sterilized within thirty (30) days of purchase or adoption; and
- B. Deposit with the animal pound a fee to help cover the cost of sterilization and administration. The fee shall be set by the City Council upon recommendation by the animal control officer.
- C. Upon receipt by the animal control officer of a signed statement from a veterinarian attesting that the dog or cat has been sterilized, the animal control officer shall remit the deposited fee, less any administrative fee, to the veterinarian.

- D. No person, having agreed in writing to have a dog or cat sterilized pursuant to this section, shall intentionally fail or refuse to have such sterilization performed within the time specified in the agreement. Violation of this subsection is a petty misdemeanor punishable by a fine not to exceed Two Hundred and no/100 (\$200.00) Dollars. Further, the animal control officer is authorized to seize any dog or cat which the owner has failed to sterilize in accordance with this section and to resell the dog or cat or destroy the dog or cat accordingly. In such a case, the fee deposited with the animal pound shall be forfeited.
- E. Upon written application by the buyer or adopting party, the animal control officer may waive the provisions of this section requiring sterilization, upon a showing that the dog or cat is a verifiable purebred breeding dog or cat.
- F. Nothing in this section shall be construed to authorize the animal control officer to sterilize a dog or cat which has been reclaimed by its owner, or for which the period to reclaim as owner has not expired.

3.15 Immobilization of Dogs and Cats. For the purpose of enforcement of this Section any peace officer, or person whose duty is animal control, may use a so-called tranquilizer gun or other instrument for the purpose of immobilizing and catching an dog or cat.

3.16 Barking Dogs.

- A. It shall constitute a nuisance and be unlawful if any dog barks, whines, howls, bays, cries, or makes other noise excessively so as to cause annoyance, disturbance or discomfort to any individual provided that such noise lasts for a period of more than five minutes continuously or intermittent barking that continues for more than one hour and is plainly audible from a distance of 100 feet or more from the premises where the dog is kept. It shall not be a violation of this section if the dog was barking, crying, or making other noise due to harassment or injury to the dog or a trespass upon the premises where the dog is located.
- B. Penalty. A first time violation of this section shall be deemed a petty misdemeanor.
- C. Seizure of Barking Dogs Noise Abatement. Any police officer or animal control officer may enter onto private property and seize any barking dog, provided that the following conditions exist:
 - (1) There is an identified complainant other than the police or animal control officer making a contemporaneous complaint about the barking.
 - (2) The officer reasonably believes that the barking meets the criteria set forth in Subdivision 3.16(A);

- (3) The officer can demonstrate that there has been at least one previous complaint of a dog barking at this address on a prior date;
- (4) The officer has made reasonable attempts to contact the owner of the dog(s) or the owner of the property and those attempts have either failed or have been ignored.
- (5) The seizure will not involve forced entry into a private residence. Use of a passkey obtained from a property manager, landlord, innkeeper, or other person authorized to have such a key shall not be considered as a forced entry.
- (6) No other less intrusive means to stop the barking is available; and,
- (7) Written notice of the seizure is left in a conspicuous place if personal contact with the owner of the dog is not possible.

D. Disposition of Seized Dogs. Any dog seized under the provisions of Subdivision 3.16(C) shall be taken to the animal pound and kept there to be reclaimed by the owner. No impound fee shall be charged unless the circumstances indicate that the owner failed to cooperate with or obstructed the animal control or police officer's attempts to abate the noise through other less intrusive means. The owner shall pay all other fees required under this Chapter. Any dog or cat seized under Subdivision 3.16(C) which is unclaimed may be disposed of according to the provisions of Section 3.10 or Section 3.13.

3.17 Interfering With Animal Control Officer. No person shall in any manner molest, hinder or interfere with the animal control officer, his agents, any police officer, or any other individual employed directly or by contract with the city to capture dogs or cats and convey them to the animal pound while such person is engaged in such occupation.

3.18 Dangerous Dogs. No person may own, possess, keep, harbor, maintain or otherwise have a dangerous dog in the City.

- A. Notice of Potentially Dangerous or Dangerous Dogs. If after an investigation conducted by the animal control officer or a Comfrey Police Officer, it is determined that a dog is potentially dangerous or dangerous according to the criteria described in Section 3.01, the animal control officer or Comfrey Police Department will serve a notice of intent to declare the dog potentially dangerous or dangerous dog on the owner of the dog in question. This notice shall inform the owner of this designation, the basis for the determination, the procedures for contesting the designation as described in Subdivision B below, and the result of the failure to contest the designation as described in Subdivision H. below.
- B. Contesting Declaration of Dangerous or Potentially Dangerous Dogs. If the owner of a dog has received a notice of intent to declare a dog as a potentially dangerous or dangerous dog, the owner may request that a hearing be conducted to determine whether or not such a designation is justified. This request must be made in writing

and delivered to the animal control officer or Comfrey Police Department within fourteen (14) days of receipt of the notice of intent to declare a dog as potentially dangerous or dangerous.

- C. Initial Review. Upon receipt of such request, the animal control officer or Comfrey Police Department will forward the request along with all necessary supporting documentation to the City Attorney. The City Attorney will make an initial review of the evidence supporting the notice designation to convene a hearing of the Animal Control Review Panel. If there is insufficient evidence supporting the designation, the City Attorney shall withdraw the designation and none of the requirements of this Section applying to dangerous or potentially dangerous dogs shall apply to the dog in question. If there is sufficient evidence that the Review Panel could uphold the designation, the City Attorney will cause this notice to be brought to the attention of the Review Panel that will conduct the hearing.
- D. Hearing Procedure. This Review Panel will consist of two council members as appointed by the Mayor, and an elector who resides within the City. The panel will schedule a hearing and may call witnesses and review documents as needed to make a determination on the issue. Owners shall have the right to present evidence on their behalf and to cross-examine any witnesses. A simple majority of the members of the panel is necessary for a finding that the dog is either dangerous or potentially dangerous. The burden of proof is on the animal control officer or Comfrey Police Department. A finding supporting a designation of dangerous or potentially dangerous dog must be proven by a preponderance of the evidence. The decision of the Panel shall be in writing and shall indicate the reasons for the findings. A copy of the findings shall be provided to the animal control officer, Comfrey Police Department, and the dog owner.
- E. Effect of Findings that Dog is Dangerous. If the panel finds there is sufficient basis to declare a dog as potentially dangerous or dangerous, that finding will serve as notice to the owner that the dog is in fact a potentially dangerous or dangerous dog. Within fourteen (14) days after the owner has received notice that the dog is dangerous, the owner or the owner must cause the dog to be humanely destroyed or removed from the City limits.
- F. Appeal. If the owner of the dog disputes the decision of the Review Panel, the owner shall have the right to appeal the decision to the Comfrey City Council. The appeal must be filed with the City Clerk within fourteen (14) days of the panel's ruling. If the owner of the dog disputes the findings of the City Council, the owner may appeal to the Minnesota Court of Appeals as provided by state law.

- G. Mayor to Appoint Veterinarian and Substitute Panel Members. The Mayor of the City of Comfrey may appoint a veterinarian to serve on the hearing panel on a voluntary basis in lieu of the elector. Such appointment shall continue in effect until the appointee resigns or is replaced by the Mayor. In the event the veterinarian is temporarily unavailable or has a personal interest in the outcome of the proceeding, the Mayor may appoint another veterinarian to replace the initial appointee on the Panel. In addition, in the event either of the city council members are temporarily unavailable or have a personal interest in the outcome of the proceeding, the Mayor may appoint other members of the city council or city staff to sit in their place.
- H. Failure to Contest Notice of Intent to Declare. If the owner of a dog receives a notice from the animal control officer or Comfrey Police Department of the intent to declare the dog as potentially dangerous or dangerous, and the owner fails to contest that notice within fourteen (14) days, the owner shall be considered as having forfeited the right to the hearing described in Subdivision D and as having consented to the designation of the dog as potentially dangerous or dangerous by default. The animal control officer or Comfrey Police Department will then issue a declaration of dangerous or potentially dangerous dog to the owner. Within fourteen (14) days after the owner has received notice that the dog is dangerous, the owner must cause the dog to be humanely destroyed or removed from the City limits.
- I. Seizure of Dangerous Dogs and Violations. The animal control officer shall or any police officer may immediately seize any dangerous dog and/or issue a citation to the owner of any dangerous dog if within fourteen (14) days after the owner has received notice that the dog is dangerous, the dog is not humanely destroyed or removed from the City limits.
- J. Exemptions. Dogs may not be declared dangerous if the threat, injury or damage was sustained by a person;
- (1) who was at the time of injury committing or attempting to commit a willful trespass or other tort or crime upon the premises occupied by the dog; or
 - (2) who was provoking, tormenting, teasing, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, teased, abused, or assaulted the dog;
 - (3) who was committing or attempting to commit a crime.
- K. Law Enforcement Exemption. The provisions of this section do not apply to trained dogs used by law enforcement personnel officials for police work.

3.19 Non-Domestic Animals. It shall be illegal for any person to own, possess, harbor, or offer for sale, any non-domestic animal within the City limits. Any owner of such an

animal at the time of adoption of this Code shall have thirty days in which to remove the animal from the City after which time the City may impound the animal as provided for in this Section. An exception shall be made to this prohibition for animals specifically trained for and actually providing assistance to the handicapped or disabled, and for those animals brought into the City as part of an operating zoo, veterinarian clinic, scientific research laboratory, or a licensed show or exhibition.

3.20 **Definition of Kennel.** The maximum allowable number of dogs and cats kept on the same premises shall be two (2) each. The keeping of three or more dogs or three or more cats, whether owned by the same person or not and for whatever purpose kept, shall constitute a “kennel;” except that a fresh litter of pups or kittens may be kept for a period of three months before such keeping shall be deemed to be a “kennel;” and except that a third dog may be kept without such keeping being deemed to be a “kennel” if said third dog is a “Service Animal,” as defined under the Americans with Disabilities Act, or a licensed “therapy dog,” which licensing agency requires service hours to be performed by said therapy dog on an annual basis.

3.21 **Kennel as a Nuisance.** Because the keeping of three or more dogs, three or more cats, or more than four of a combination of dogs and cats on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of three or more dogs or three or more cats on the premises is hereby declared to be a nuisance and no person shall keep or maintain a kennel within the City.

3.22 **Enforcement.** The animal control officer or police officer may enter upon private land where there is reasonable cause to believe Sections 3.02-3.21 are being violated. Any person who brings a dog into the City is subject to this Section.

3.23 **Summary Destruction.** Notwithstanding the provisions set forth in this Chapter establishing the procedure to declare a dog dangerous, whenever the animal control officer or a police officer has reasonable cause to believe that a particular dog or cat presents a clear and immediate danger to residents of the City because it is infected with rabies or because of a clearly demonstrated vicious nature, said officer, after making reasonable attempts to impound such dog or cat, may summarily destroy said dog or cat.

3.24 **Penalties.** Unless otherwise specified, violations of Subsections 3.02-3.21 are declared to be misdemeanor offenses and are punishable by a fine and/or jail in that amount which may be lawfully prescribed by a municipality for a violation that is defined as a misdemeanor.

ANIMALS IN PARKS

3.25 **Dogs and Cats in Parks.** It is unlawful for any person who owns or has control of any cat or dog to allow or permit the same to enter any city park unless such dog or cat is on a leash and attended by the owner or person in control thereof.

3.26 **Defecation.** It is unlawful for any person who owns or has control of a dog to cause or permit such dog to defecate on any private property without the consent of the property owner, or on any public property, unless such person immediately removes the excrement and places it in a proper receptacle. The provisions of this section do not apply to a seeing-eye dog under the control of a blind person.

3.27 **Penalties.** Violation of the provisions of Sections 3.25-3.26 shall be a petty misdemeanor and upon the first conviction shall be punishable with a fine of Fifty and no/100ths Dollars (\$50.00); upon a second conviction it shall be punishable with a fine of One Hundred and no/100ths Dollars (\$100.00); upon a third conviction it shall be punishable with a fine of One Hundred Fifty and no/100ths Dollars (\$150.00); and upon a fourth conviction and subsequent convictions, it shall be punishable with a fine of Two Hundred and no/100ths Dollars (\$200.00).

KEEPING ANIMALS OR LIVESTOCK

3.28 It shall be unlawful for any person, firm, or corporation to keep, store, harbor, load, or unload any horse, cattle, sheep, goats, swine, or poultry within this City, or to permit the same to be done by others upon premises owned, occupied, or controlled by them. Any person, firm, or corporation violating any of the provisions of this paragraph shall, upon conviction thereof, be deemed guilty of a misdemeanor.

CHAPTER 4

BUILDING REGULATIONS

4.01 **Plumbing Code.** The Minnesota Plumbing Code as in effect on July 1, 2002, is adopted, together with all changes and amendments, and the provisions thereof, including the terms defined therein, shall be enforced and in effect in the City of Comfrey, except as otherwise modified pursuant to the terms of the Comfrey City Code. Wherever the provisions of the City Code are more restrictive in terms of allowable materials which may be used than the Minnesota Plumbing Code, the terms of the Comfrey City Code shall be applicable.

4.02 **Minimum Building Occupancy Standards.**

Subsection 1. Definitions

BUILDING - Any structure used or intended for supporting or sheltering any use or occupancy.

COMPLIANCE OFFICIAL - Police Chief.

DWELLING UNIT - A single residential accommodation which is arranged, designed, used, or, if vacant, intended for use exclusively as a domicile for one family. Where a private garage is structurally attached, it shall be considered as part of the building in which the dwelling unit is located.

FAMILY - One or more persons each related to the other by blood, marriage, or adoption, or a group of not more than four persons not all so related, maintaining a common household in a dwelling unit and using common cooking and kitchen facilities.

HABITABLE ROOM - A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, furnace rooms, unfinished basements (those without required ventilation, required electrical outlets and required exit facilities), pantries, utility rooms of less than 50 square feet of floor space, foyers, communicating corridors, stairways, closets, storage spaces, workshops, and hobby and recreation areas in parts of the structure below ground level or in attics.

OCCUPANT. Any person (including an owner or operator) occupying any structure, building or part thereof, dwelling, dwelling unit, rooming unit or premise.

PERSON. An individual, firm, partnership, association, corporation, joint venture or organization of any kind.

REPAIR. To restore to a sound and acceptable state of operation, serviceability or

appearance.

ROOMING UNIT. Any room or group of rooms forming a single habitable unit used for living or sleeping but not for cooking and eating purposes.

SAFETY. The condition of being reasonably free from danger and hazards that may cause accidents and diseases.

Subsection 2. Permissible Occupancy per Dwelling Unit.

(A) *Permissible occupancy per dwelling unit.* The maximum permissible occupancy of any dwelling unit shall be determined as follows:

1. For the first occupant, 350 square feet of habitable room floor space, and for every additional occupant thereof, at least 200 square feet of habitable room floor space.
2. In no event shall the total number of occupants exceed two times the number of habitable rooms, less kitchen, in the dwelling unit.
3. Not more than one family, except for temporary guests, shall occupy a dwelling unit.
4. No owner or person shall occupy or let another person occupy any building, unless it and the premises are clean, sanitary, fit for human occupancy and comply with all applicable legal requirement of the State of Minnesota and the City of Comfrey.

(B) *Basements not permissible for living.* Unfinished basements shall not be occupied for the purpose of living.

Subsection 3. Responsibility of Owners. No owner or person shall occupy or let another person occupy any building unless the habitable space per occupant complies with the terms of this Chapter 4, Section 4.02.

Subsection 4. Maintenance Standards. The owner and occupant of a property shall keep and maintain the property in compliance with the following requirements:

- (A) *Exterior property areas.* Exterior property areas, which means all areas of a property which are exterior and not related to any portion of a building, structure, or accessory structure located on the property, shall be maintained as follows:
1. The exterior property areas shall be kept and maintained in a clean, safe, and sanitary condition.
 2. The property shall be graded and maintained to prevent the erosion of soil and accumulation of water thereon, or within any building located thereon, except in approved water retention areas.

3. Private sidewalks, driveways, and similar areas shall be kept in good repair and maintained free from hazardous conditions.

(B) *Driving and parking areas.* The owner of a building shall be responsible for maintaining in good condition, delineated parking areas and driveways. No parking shall be permitted in the front setback (front yard) unless it is an approved driveway or parking area. Exemption: during snowfall or snow removal.

(C) *Exterior of buildings, structures, and accessory structures.* The exterior of any building, structure, or accessory structure shall be maintained in good repair so as not to pose a threat to public health, safety, or general welfare.

1. *Exterior surfaces.* Exterior wood surfaces shall be protected from the elements and decay by maintained paint, stain, or other protective covering or treatment. Peeling, flaking and chipped paint shall be removed and the surfaces repainted or otherwise covered by other protective wood covering. Joints in siding materials and between siding and other features shall be maintained weather-resistant. Metal surfaces subject to rust or corrosion shall be stabilized and treated to inhibit future rust or corrosion. For purposes of this chapter, if twenty percent (20%) or more of a wall or other surface area, such as; fascia, soffits, rake, has the protective coating peeling, flaking, chipping, or deteriorated, then the wall or surface area shall be restored to a protected condition.

2. *Foundations, exterior walls, roofs, and drainage.* Exterior walls shall be free from holes, breaks, and loose, missing or rotting materials. The roof and flashing shall be maintained weather-resistant so as not to allow moisture to enter the building. Roof drainage systems shall be maintained in good working order to perform the intended function. Roof water shall not be discharged in a manner that creates a public nuisance.

3. *Windows, doors, screens.* Every window, exterior door, and other exterior openings, shall be substantially tight and shall be kept in sound condition and repair. Every window, door and frame shall be constructed and maintained in such relation to the adjacent wall construction as to completely exclude rain, wind, vermin, and rodents from entering the building. Every openable window shall be supplied with 16 mesh screens during the insect season and shall be equipped with an approved lock if located less than six feet above grade. Glazing materials with cracks, holes, or similar damage and missing glazing shall be replaced with approved glazing materials.

4. *Stairways, decks, porches, and balconies,* and attachments thereto, shall be

maintained structurally sound, in good repair, capable of supporting the imposed loads, able to perform the intended function and maintained weather-resistant.

5. *Chimneys, flues, and vents.* Chimneys, flues, vents, and other similar features shall be maintained in good and safe repair and structurally sound. Exposed surfaces of metal or wood shall be maintained and protected from rust or decay according to the requirements of this Chapter.
 6. *Safety features.* Safety features that are placed on property shall be maintained in good condition and repair and structurally sound to perform the intended function.
- (D) *Public or shared areas.* Every owner of a building shall maintain in a clean, sanitary, and safe condition the shared or public areas of the building or premises thereof.
- (E) *Occupied areas.* All occupants of a building shall maintain in a clean, sanitary, and safe condition that part of those parts of the building and premises thereof that they control.
- (F) *Sanitary Maintenance of fixtures and facilities.* Every occupant of a building shall keep all supplied fixtures and facilities therein in a clean, sanitary and safe condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.
- (G) *Minimum heating capacity and maintenance.* In every dwelling unit or rooming unit when the control of the supplied heat is the responsibility of a person other than an occupant, a temperature of at least 68 degrees Fahrenheit shall be maintained 3 feet above the floor.
- (H) *Utilities.* Every dwelling shall be serviced by appropriate and necessary utility service. Every dwelling must have an operating and functional water service, sewer service, electrical service and an operational hot water heater. In addition, in the months of October through April, every dwelling shall have an adequate source of heat. Non-structural electric space heaters shall not constitute an adequate source of heat.

It shall be a prima facie violation of this section if any required utility service to an occupied dwelling unit is shut off for more than two weeks.

Subsection 5. Notice and Enforcement.

- (A) The Compliance Official is authorized to administer and enforce the provisions of this Chapter 4, Section 4.02. The Compliance Official is hereby authorized to cause inspection on a scheduled basis and/or when conditions exist to believe that a violation of this Chapter 4, Section 4.02, has been or is being committed. In the case of a violation or suspected violation involving failure to maintain occupied areas or fixtures and facilities in a clean, sanitary or safe condition, the County Health Inspector shall inspect such dwelling for sanitary conditions and send a report to the Compliance Official detailing the non-sanitary conditions of the dwelling and the steps needed to abate such conditions.
- (B) If the Compliance Official finds that a condition exists which is a violation of any of the provisions of this Chapter 4, Section 4.02, the Compliance Official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:
1. The street address and a legal description sufficient for identification of the premises upon which the building is located.
 2. A statement that the Compliance Official has found the building to be in violation of this Chapter 4, Section 4.02, with a brief and concise description of the conditions found which constitute a violation.
 3. A statement of the action required to be taken as determined by the Compliance Official.
 - a) If the Compliance Official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefore and the work physically commenced within such time (not to exceed 30 days) and completed within such time as the Compliance Official shall determine as reasonable under all circumstances.
 - b) If the Compliance Official has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a certain time from the date of the order as determined by the Compliance Official.
 4. Statements advising that if any required repair or demolition work (without vacation being required) is not commenced within the time specified, the Compliance Official:
 - a) Will order the building vacated and posted to prevent further occupancy until the work is completed; and
 - b) May proceed to cause the work to be done and charge the cost thereof against the property or its owner.

5. Statements advising that any person having record title or legal interest in the building may appeal from the notice and order any actions of the Compliance Official.
- (C) Any person aggrieved by any notice or order of the Compliance Official issued under this Chapter 4, Section 4.02, may file a petition with the City Clerk within ten (10) days after the notice or order.
1. Upon receipt of the petition, the City Clerk shall set a date for a hearing before the City Council and give the petitioner at least five (5) days prior written notice of the date, time, and place of the hearing.
 2. At the hearing, the petitioner shall be given an opportunity to show cause why the notice or order should be modified or withdrawn. The petitioner may be represented by counsel at his/her expense.
 3. The hearing shall be conducted by the City Council. The Council may modify, reverse, or affirm the decision of the Compliance Official upon the same standard set forth in the previous section.
- (D) Upon the expiration of the time limit to petition the City Council set forth in subsection C of this section or upon a decision by the City Council modifying or affirming the Order of the Compliance Official pursuant to paragraph 3, subsection C of this section, whichever is later, the Compliance Official shall take such action as is necessary to abate the conditions constituting the violation of the provisions of this Chapter 4, Section 4.02, including causing the repair, rehabilitation, vacation or demolition of the building or buildings. Such action shall be taken in the manner as specified in the notice, or as modified by the City Council.
- Nothing in this section shall relieve the owner of such building of any liability or costs regarding such repair, rehabilitation, vacation or demolition. Any costs and expenses incurred by the City resulting from the enforcement of this Chapter 4, Section 4.02 will be billed to the property owner. If the property owner fails to pay such costs within 30 days of the date billed, the amount unpaid shall be certified by the City Clerk as an assessment on the property for collection with the real estate taxes on such property in the following year.
- (E) Violation of any of the maintenance or occupancy standards of this Chapter 4, Section 4.02, shall constitute a misdemeanor on the part of the property owner, and may be prosecuted as such in addition to such other actions as are authorized hereunder to be taken by the City.

4.03 **Temporary Family Health Care Dwellings.** Pursuant to authority granted by Minnesota Statutes, Section 462.3593, subdivision 9, the City of Comfrey opts-out of

the requirements of Minn. Stat. §462.3593, which defines and regulates Temporary Family Health Care Dwellings.

4.04 Rental Housing.

Subsection 1. Definitions. The following terms as used in this section shall have the following meanings:

- A. The term “rental dwelling unit” means any building, structure or enclosure, or portion thereof, including any mobile home, rented or offered for rent by any person or persons for use for rent by any person or persons for use for residential purposes by such other person or persons.
- B. The term “building official” means the person appointed by the City Council to enforce the provisions of this Section.

Subsection 2. License Required

It is unlawful for any person, as the owner, manager, or other person having control of any rental dwelling unit, to lease, rent, or permit to be leased or rented, any dwelling unit within the city without first having obtained a rental dwelling unit license for such rental dwelling unit from the City.

Subsection 3. License and Fees

- A. The application for a license shall be made and filed on a form furnished by the City clerk for such purpose and shall set forth the name, residence address and phone number of the owner of the rental dwelling unit or the agent authorized by the owner to receive and give receipt for notices in cases where the owner of the rental dwelling unit does not reside within 20 miles of the City.
- B. The annual rental dwelling unit license fee for each rental dwelling unit shall be established by the City Council by resolution. An additional fee in the same amount shall be imposed for re-inspection for non-compliance.

Subsection 4. License Expiration.

Each license issued pursuant to this section shall expire on the 31st day of December of the year in which such license is issued.

Subsection 5. Inspection.

Upon receipt of an application for any rental dwelling unit license, the City clerk shall forward a copy of such application to the Building Official, whereupon the Building Official, shall within ten (10) days after receiving such application, inspect the rental dwelling unit to be licensed to determine whether such unit complies with provisions of **Chapter 4, Section 4.02**, establishing

Minimum Building Occupancy Standards. No rental dwelling unit rental license shall be issued by the City unless the dwelling complies with the provisions of the City code which pertain to such rental dwelling unit.

Subsection 6. Register of Occupancy.

Each owner of a rental dwelling unit within the City rented or offered for rent for residential purposes shall maintain a register of occupancy for each such rental dwelling unit, which register shall be available for examination by city officials, and shall include the following information:

- A. The address of the rental dwelling unit;
- B. The number of bedrooms per unit;
- C. The names of the current occupants per unit;
- D. The maximum number of people permitted per rental dwelling unit.

Subsection 7. Agent Required.

Each owner of a rental dwelling unit within the City, rented or offered for rent for residential purposes which owner does not reside within 20 miles of the city shall, by written document executed and acknowledged by such owner, appoint an agent residing within the City, upon which agent City may serve notices pertaining to the administration of this section or of any provisions effective as if made upon such owner.

Subsection 8. Exception.

This Section shall not apply to the following: properties containing more than two dwelling units; properties owned by a unit of government; or to any hotel, motel room, assisted living facility, or related facility licensed by the State of Minnesota.

Subsection 9. Transfer of License.

Each license issued pursuant to this section may be transferred to another party, provided that any licensee shall give written notice of such transfer to the City at least forty-eight (48) hours prior to the transfer of the licensed premises, which notice shall include the name and address of the transferee.

Subsection 10. Property Maintenance.

It shall be the responsibility of each owner of a rental dwelling unit to maintain the property in compliance with the provisions of Chapter 4, Section 4.02, establishing Minimum Building Occupancy Standards. Failure of the owner to comply with provisions of this section shall constitute a violation.

Subsection 11. Conduct on Licensed Premises. Violations, provision for penalty.

- A. The renter/occupant shall be responsible to conduct themselves in such a manner as to not cause the premises to be in noncompliance with the City of Comfrey City Code.
- B. The Building Official shall be charged with the responsibility of enforcing this Section.
- C. Upon determination by the Building Official that the licensed premises are out of compliance with the requirements of this Section, the Building Official shall notify the license holder by regular mail of such violations. If such violations are not cured within 30 days, the City Council, following notice and hearing, may revoke the rental dwelling unit license.
- D. If another violation occurs within twelve (12) months of an incident for which notice in paragraph C of the Section was given, the license holder shall be notified of the instance of violation and shall also be required to meet with the building official.
- E. If another instance of disorderly use of the premises occurs within twelve (12) months after receipt of notices pursuant to Paragraph C and D, the rental dwelling unit rental license may be revoked or suspended for such unit by action of the City Council. Such suspension or revocation may be for all units in a given building address. Upon suspension or revocation, a license holder shall pay to the City a reinstatement fee as established by City Council resolution. A suspension may be stayed subject to payment of the applicable reinstatement fees and no further violations for a period of time.
- F. No suspension or revocation shall be imposed where the instance of violation occurred during the pendency of eviction proceedings (unlawful detainer) or within thirty (30) days of notice given by the license holder to a tenant to vacate the premises where the violation was related to and occurring in the unit for which eviction proceedings were undertaken or notice to vacate was given. Eviction proceedings shall not be a bar to sanctions, however, unless they are diligently pursued by the license holder.
- G. All written leases for property subject to provisions of this Section after its effective date shall contain a clause providing that tenants violating provisions of this Section shall constitute a material breach of the lease and are grounds for termination of such lease.

CHAPTER 5 BUSINESS REGULATIONS

5.01 Junk Dealers.

Subsection 1: No person or persons, association, partnership, firm, or corporation shall hereafter in the City of Comfrey, keep, conduct, or maintain any building, structure, yard, or place for keeping, storing, or piling in commercial quantities whether temporarily, irregularly, or continually, or for the buying or selling at retail or wholesale, or the dismantling or wrecking of automobiles or other vehicles or machinery, or dealing in any old, used, or second-hand materials of any kind, including cloth, rags, clothing, paper, rubbish, bottles, rubber, iron, brass, copper, or other metal, furniture, used motor vehicles or the parts thereof, or other articles which from its worn condition renders it practically useless for the purpose for which it was made and which is commonly classed as junk, whether with a fixed place of business or as an itinerant peddler.

Subsection 2: Any person violating any of the provisions of this Section shall be guilty of a petty misdemeanor.

Subsection 3: The operation of a junk yard or automobile wrecking business in violation of the provisions of this Section is hereby declared a nuisance.

Subsection 4: Should any of the provisions or portions of this Section be held invalid in the Courts, such decision shall not invalidate any other provisions or portions of this Section.

5.02 Cable Communications Franchise. Ordinance #132 and Ordinance #185 previously adopted by the City Council, granting a Cable Communications Franchise, shall remain in full force and effect as fully as if set forth herein; a copy of which is included in the Appendix to this City Code.

5.03 Electric Franchise.

Subsection 1: That there is hereby granted unto INTERSTATE POWER AND LIGHT COMPANY, its successors and assigns, herein called the “Grantee,” the right, permission, privilege and franchise, for a period of twenty-five (25) years from and after the Anniversary Date (2007), subject only to the laws of the State of Minnesota as now in force and to the conditions and limitations hereinafter contained, to erect, install, construct, reconstruct, repair, own, operate, maintain, manage and control an electric plant and an electric transmission and distribution system consisting of poles, wires, conduits, pipes, conductors and other fixtures, within the limits of said Municipality, necessary, convenient or proper for the

production, transmission, distribution and delivery of electric energy to the inhabitants of said Municipality for light, heat and power purposes.

Subsection 2: That said Grantee, its successors and assigns, is hereby granted the right-of-way in, under, over, along and across the streets, lanes, avenues, sidewalks, alleys, bridges and public grounds of said Municipality for the purpose of erecting, installing, constructing, reconstructing, repairing, owning, operating, maintaining, managing and controlling said electric plant and said electric transmission and distribution system.

Subsection 3: That said Grantee shall hold said Municipality free and harmless of and from any and all liability, damages, actions and causes of action, caused by or through the neglect or mismanagement of the Grantee in the erection, installation, construction, reconstruction, repair, operation, maintenance, management or control of said electric plant and electric transmission and distribution system.

Subsection 4: That said Grantee shall not, during the erection, installation, construction, reconstruction, repair, operation and maintenance of said plant or transmission and distribution system, unnecessarily impede public travel on the streets, lanes, avenues, sidewalks, alleys, bridges and public grounds of said Municipality, and shall leave all of said streets, lanes, avenues, sidewalks, alleys, bridges and public grounds upon which it may enter for the purpose herein authorized in as good condition as they were at the date of said entry.

Subsection 5: That said City reserves the right at a future date, by ordinance, to require a franchise fee to be paid by the Grantee on its retail operations within the city, in accordance with applicable state law. In the event the City determines that it wishes to proceed to implement such a fee, the City shall notify the Grantee in writing at least 90 days prior to adoption of such ordinance, during which time Grantee's representative will have an opportunity to discuss with City calculation of the fee, collection of the fee, fee payment schedule, change in the fee, and continuance or discontinuation of the fee. Any franchise fee must be imposed by a separate ordinance adopted by the city council, and shall not exceed any amount that Grantee may legally charge to its customers under the laws of the state of Minnesota. Such ordinance shall be effective only when all regulatory requirements are completed. The franchise fee must be shown separately on the electric utility bill to each customer, and may only be imposed if Grantee may pass along the costs of such fee to Grantee's customers.

Subsection 6: That said Grantee will extend service to any customer within the corporate limits of the Municipality in accordance with the Service Standards of Grantee as filed with the Public Utilities Commission of the Department of Commerce of the State of Minnesota.

Subsection 7: That whenever any person has obtained permission from the Municipality to move any building or structure which may interfere with the poles, wires or other

fixtures of said Grantee, Grantee shall, upon ten days' notice after all necessary permits are acquired, and at the expense of the person desiring to move such structure, remove such poles, wires or other fixtures as may be necessary to allow the passage of such structure, for a reasonable length of time, upon receipt from such person of satisfactory assurance covering the cost of such removal and replacement and any liability or damage resulting therefrom.

Subsection 8: That the term of the franchise granted by this Section and the rights granted hereunder shall continue for the period of twenty-five (25) years from and after its acceptance by said Grantee, as herein provided. This franchise shall continue without cancellation until the twenty-fifth (25) year. The Anniversary Date shall be the date this franchise was filed with the City Clerk or otherwise by operation of law.

5.04 Adult Establishments

Ordinance #151 previously adopted by the City Council, regulating adult establishments, shall remain in full force and effect as fully as if set forth herein; a copy of which is included in the Appendix to this City Code.

CHAPTER 6 LIQUOR AND TOBACCO

6.01 Intoxicating and 3.2 Percent Malt Liquor.

SUBSECTION 1. ADOPTION OF STATE LAW BY REFERENCE.

The provisions of M.S. Ch. 340A, as they may be amended from time to time, with reference to the definition of terms, conditions of operation, restrictions on consumption, provisions relating to sales, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor and 3.2 percent malt liquor are hereby adopted by reference and are made a part of this Chapter as if set out in full. It is the intention of the City Council that all future amendments to M.S. Ch. 340A are hereby adopted by reference or referenced as if they had been in existence at the time this Chapter is adopted.

SUBSECTION 2. CITY MAY BE MORE RESTRICTIVE THAN STATE LAW.

The Council is authorized by the provisions of M.S. § 340A.509, as it may be amended from time to time, to impose, and has imposed in this chapter, additional restrictions on the sale and possession of alcoholic beverages within its limits beyond those contained in M.S. Ch. 340A, as it may be amended from time to time.

SUBSECTION 3. DEFINITIONS.

In addition to the definitions contained in Minn. Stat. § 340A.101 as it may be amended from time to time, the following terms are defined for purposes of this Section:

LIQUOR. As used in this Section, without modification by the words “intoxicating” or a “3.2 percent malt” includes both intoxicating liquor and 3.2 percent malt liquor.

RESTAURANT. An eating facility, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises, where full waitress/waiter table service is provided, where a customer orders food from printed menus and where the main food course is served and consumed while seated at a single location. To be a restaurant as defined by this section, an establishment shall have a license from the state as required by Minn. Stat. § 157.16, as it may be amended from time to time, and meet the definition of either a “small establishment,” “medium establishment” or “large establishment” as defined in Minn. Stat. § 157.16, subd. 3(d), as it may be amended from time to time. An establishment which serves prepackaged food that receives heat treatment and is served in the package or frozen pizza that is heated and served, shall not be considered to be a restaurant for purposes of this Section unless it meets the definitions of a “small establishment,” “medium establishment” or “large establishment.”

SUBSECTION 4. NUDITY ON THE PREMISES OF LICENSED ESTABLISHMENTS PROHIBITED.

(A) The City Council finds that it is in the best interests of the public health, safety, and general welfare of the people of the city that nudity is prohibited as provided in this section on the premises of any establishment licensed under this Section. This is to protect and assist the owners, operators, and employees of the establishment, as well as patrons and the public in general, from harm stemming from the physical immediacy and combination of alcohol, nudity, and sex. The Council especially intends to prevent any subliminal endorsement of sexual

harassment or activities likely to lead to the possibility of various criminal conduct, including prostitution, sexual assault, and disorderly conduct. The Council also finds that the prohibition of nudity on the premises of any establishment licensed under this Section reflects the prevailing community standards of the city.

(B) It is unlawful for any licensee to permit or allow any person or persons on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material. It is unlawful for any person to be on the licensed premises when the person does not have his or her buttocks, anus, breasts, and genitals covered with a non-transparent material.

(C) A violation of this section is a misdemeanor punishable as provided by law, and is justification for revocation or suspension of any liquor, wine, or 3.2 percent malt liquor license or any other license issued under this Section or the imposition of a civil penalty under the provisions of Subsection 30(B).

SUBSECTION 5. CONSUMPTION IN PUBLIC PLACES.

No person shall consume intoxicating liquor or 3.2 percent malt liquor in a public park, on any public street, sidewalk, parking lot or alley, or in any public place other than on the premises of an establishment licensed under this Section, or where the consumption and display of liquor is lawfully permitted.

SUBSECTION 6. RAFFLES, SILENT AUCTIONS AND FUND RAISING EVENTS FOR CHARITABLE PURPOSES OF WINE, BEER OR INTOXICATING LIQUORS

No person shall conduct a silent auction, raffle or other fund raising event pursuant to Minn. Stat. § 340A.707 with prizes or awards of wine, beer or intoxicating liquors without notifying the city clerk of the event at least ten days prior to the occurrence of the event. The event holder shall provide the city with the following information: the person or organization holding the event, the day, time and location of the event, type of fund raising event (silent auction, raffle or otherwise), type and amount of wine, beer, intoxicating liquor to be awarded as prizes, and the charitable purposes to which the event proceeds will be donated.

SUBSECTION 7. NUMBER OF LICENSES WHICH MAY BE ISSUED.

State law establishes the number of liquor licenses that a city may issue. The Council is not required to issue the full number of licenses that it has available.

SUBSECTION 8. TERM AND EXPIRATION OF LICENSES.

Each license shall be issued for a maximum period of one year. All licenses, except temporary licenses, shall expire on June 30 of each year. All licenses shall expire on the same date. Temporary licenses expire according to their terms. Consumption and display permits issued by the Commissioner of Public Safety, and the accompanying city consent to the permit, shall expire on March 31 of each year.

SUBSECTION 9. KINDS OF LIQUOR LICENSES.

The Council is authorized to issue the following licenses and permits, up to the number specified in Subsection 7:

(A) 3.2 percent malt liquor on-sale licenses, which may be issued only to golf courses, restaurants, hotels, clubs, bowling centers, and establishments used exclusively for the sale of 3.2 percent malt liquor with the incidental sale of tobacco and soft drinks.

(B) 3.2 percent malt liquor off-sale license.

(C) Temporary 3.2 percent malt liquor licenses which may be issued only to a club, charitable, religious, or nonprofit organization.

(D) Off-sale intoxicating liquor licenses, which may be issued only to exclusive liquor stores. The fee for an off-sale intoxicating liquor license established by the Council under Section 10 shall not exceed \$240 or a greater amount which may be permitted by Minn. Stat. § 340A.408, subd. 3, as it may be amended from time to time.

(E) On-sale intoxicating liquor licenses, which may be issued to the following establishments as defined by Minn. Stat. § 340A.101, as it may be amended from time to time, and this Section: hotels, restaurants, bowling centers, theaters, clubs or congressionally chartered veterans organizations, theaters and exclusive liquor stores. Club licenses may be issued only with the approval of the Commissioner of Public Safety. The fee for club licenses established by the Council under Section 10 of this Section shall not exceed the amounts provided for in Minn. Stat. § 340A.408, subd. 2(b) as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at a community festival held within the city under the provisions of Minn. Stat. § 340A.404, subd. 4(b) as it may be amended from time to time. The Council may in its sound discretion authorize a retail on-sale licensee to dispense intoxicating liquor off the licensed premises at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the city, under the provisions of Minn. Stat. § 340A.404, subd. 4(a) as it may be amended from time to time; however, the licensee is prohibited from dispensing intoxicating liquor to any person attending or participating in an amateur athletic event being held on the premises.

(F) Sunday on-sale intoxicating liquor licenses, only after authorization to do so by voter approval at a general or special election as provided by Minn. Stat. § 340A.504, subd. 3, as it may be amended from time to time. Sunday on-sale intoxicating liquor licenses may be issued only to a restaurant as defined in Section 3 of this Section, club, bowling center, or hotel which has a seating capacity of at least 30 persons, which holds an on-sale intoxicating liquor license, and which serves liquor only in conjunction with the service of food. The maximum fee for this license, which shall be established by the Council under the provisions of Subsection 10 of this Section, shall not exceed \$200, or the maximum amount provided by Minn. Stat. § 340A.504, subd. 3(c) as it may be amended from time to time.

(G) Combination on-sale/off-sale intoxicating liquor licenses if the city has a population less than 10,000.

(H) Temporary on-sale intoxicating liquor licenses, with the approval of the Commissioner of Public Safety, which may be issued only in connection with a social event sponsored by a club, charitable, religious, or other nonprofit corporation that has existed for at least three years; a political committee registered under state law; or a state university. No license shall be for longer than four consecutive days, and the city shall issue no more than 12 days' worth of temporary licenses to any one organization in one calendar year.

(I) On-sale wine licenses, with the approval of the Commissioner of Public Safety to: theaters, restaurants that have facilities for seating at least 25 guests at one time and meet the criteria of Minn. Stat. § 340A.404, subd. 5, as it may be amended from time to time, and which

meet the definition of restaurant in section 3; to licensed bed and breakfast facilities which meet the criteria in Minn. Stat. § 340A.4011, subd. 1, as it may be amended from time to time and to theaters that meet the criteria of Minn. Stat. § 340A.404, subd. 1(b) as it may be amended from time to time. The fee for an on-sale wine license established by the Council under the provisions of Subsection 10 of this Section, shall not exceed one-half of the license fee charged for an on-sale intoxicating liquor license. The holder of an on-sale wine license who also holds an on-sale 3.2 percent malt liquor license is authorized to sell malt liquor with a content over 3.2 percent (strong beer) without an additional license.

(J) One day consumption and display permits with the approval of the Commissioner of Public Safety to a nonprofit organization in conjunction with a social activity in the city sponsored by the organization.

(K) Approval of the issuance of a consumption and display permit by the Commissioner of Public Safety. The maximum amount of the additional fee which may be imposed by the Council on a person who has been issued a consumption and display permit under the provisions of Subsection 10 of this Section shall not exceed \$300, or the maximum amount permitted by Minn. Stat. § 340A.414, subd. 6, as it may be amended from time to time. Consumption and display permits shall expire on March 31 of each year.

SUBSECTION 10. LICENSE FEES; PRO RATA.

(A) No license or other fee established by the city shall exceed any limit established by Minn. Stat. Ch. 340A, as it may be amended from time to time, for a liquor license.

(B) The Council may establish from time to time in the Ordinance Establishing Fees and Charges the fee for any of the liquor licenses it is authorized to issue. The license fee may not exceed the cost of issuing the license and other costs directly related to the enforcement of the liquor laws and this Section. No liquor license fee shall be increased without providing mailed notice of a hearing on the proposed increase to all affected licensees at least 30 days before the hearing.

(C) The fee for all licenses, except temporary licenses, granted after the commencement of the license year shall be prorated on a quarterly basis.

(D) All license fees shall be paid in full at the time the application is filed with the city. If the application is denied, the license fee shall be returned to the applicant.

(E) A refund of a pro rata share of an annual license fee may occur only if authorized by Minn. Stat. § 340A.408, subd. 5, as it may be amended from time to time.

SUBSECTION 11. COUNCIL DISCRETION TO GRANT OR DENY A LICENSE.

The Council in its sound discretion may either grant or deny the application for any license or for the transfer or renewal of any license. No applicant has a right to a license under this Section.

SUBSECTION 12. APPLICATION FOR LICENSE.

(A) *Form.* Every application for a license issued under this Section shall be on a form provided by the city. Every application shall state the name of the applicant, the applicant's age, representations as to the applicant's character, with references as the Council may require, the type of license applied for, the business in connection with which the proposed license will operate and its location, a description of the premises, whether the applicant is owner and operator of the business, how long the applicant has been in that business at that place, and other

information as the Council may require from time to time. An application for an on-sale intoxicating liquor license shall be in the form prescribed by the Commissioner of Public Safety and shall also contain the information required in this section. The form shall be verified and filed with the city. No person shall make a false statement in an application.

(B) *Financial responsibility.* Prior to the issuance of any license under this Section, the applicant shall demonstrate proof of financial responsibility as defined in Minn. Stat. § 340A.409, as it may be amended from time to time, with regard to liability under Minn. Stat. § 340A.801, as it may be amended from time to time. This proof will be filed with the city and the Commissioner of Public Safety. Any liability insurance policy filed as proof of financial responsibility under this section shall conform to Minn. Stat. § 340A.409, as it may be amended from time to time. Operation of a business which is required to be licensed by this Section without having on file with the city at all times effective proof of financial responsibility is a cause for revocation of the license.

SUBSECTION 13. DESCRIPTION OF PREMISES.

The application shall specifically describe the compact and contiguous premises within which liquor may be dispensed and consumed. The description may not include any parking lot or sidewalk.

SUBSECTION 14. APPLICATIONS FOR RENEWAL.

At least 90 days before a license issued under this Section is to be renewed, an application for renewal shall be filed with the city. The decision whether or not to renew a license rests within the sound discretion of the Council. No licensee has a right to have the license renewed.

SUBSECTION 15. TRANSFER OF LICENSE.

No license issued under this Section may be transferred without the approval of the Council. Any transfer of stock of a corporate licensee is deemed to be a transfer of the license, and a transfer of stock without prior Council approval is a ground for revocation of the license. An application to transfer a license shall be treated the same as an application for a new license, and all of the provisions of this code applying to applications for a license shall apply.

SUBSECTION 16. INVESTIGATION.

(A) *Preliminary background and financial investigation.* On an initial application for a license, on an application for transfer of a license and, in the sound discretion of the Council that it is in the public interest to do so, on an application for renewal of a license, the city shall conduct a preliminary background and financial investigation of the applicant or it may contract with the Commissioner of Public Safety for the investigation. The applicant shall pay with the application an investigation fee of \$500 which shall be in addition to any license fee. If the cost of the preliminary investigation is less than \$500, the unused balance shall be returned to the applicant. The results of the preliminary investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

(B) *Comprehensive background and financial investigation.* If the results of a preliminary investigation warrant, in the sound discretion of the Council, a comprehensive background and financial investigation, the Council may either conduct the investigation itself or contract with the Commissioner of Public Safety for the investigation. The investigation fee for this

comprehensive background and financial investigation to be paid by the applicant shall be \$500, less any amount paid for the initial investigation if the investigation is to be conducted within the state, and \$10,000, less any amount paid for the initial investigation, if the investigation is required outside the state. The unused balance of the fee shall be returned to the applicant whether or not the application is denied. The fee shall be paid in advance of any investigation and the amount actually expended on the investigation shall not be refundable in the event the application is denied. The results of the comprehensive investigation shall be sent to the Commissioner of Public Safety if the application is for an on-sale intoxicating liquor license or an on-sale wine license.

SUBSECTION 17. HEARING AND ISSUANCE.

The Council shall investigate all facts set out in the application and not investigated in the preliminary or comprehensive background and financial investigations. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall, in its sound discretion, grant or deny the application. No license shall become effective until the proof of financial security has been approved by the Commissioner of Public Safety.

SUBSECTION 18. RESTRICTIONS ON ISSUANCE.

(A) Each license shall be issued only to the applicant for the premises described in the application.

(B) Not more than one license shall be directly or indirectly issued within the city to any one person.

(C) No license shall be granted or renewed for operation on any premises on which taxes, assessments, utility charges, service charges, or other financial claims of the city are delinquent and unpaid.

(D) No license shall be issued for any place or any business ineligible for a license under state law.

(E) No license shall be granted within 500 feet of any school or church. The distance is to be measured from the closest side of the church to the closest side of the structure on the premises within which liquor is to be sold.

SUBSECTION 19. CONDITIONS OF LICENSE.

The failure of a licensee to meet any one of the conditions of the license specified below shall result in a suspension of the license until the condition is met.

(A) Within 90 days after employment, every person selling or serving liquor in an establishment which has an on-sale license shall receive training regarding the selling or serving of liquor to customers. The training shall be provided by an organization approved by the Council. Proof of training shall be provided by the licensee.

(B) Every licensee is responsible for the conduct of the place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises is deemed the act of the licensee as well, and the licensee shall be liable to all penalties provided by this Section and the law equally with the employee.

(C) Every licensee shall allow any peace officer, health officer, city employee, or any other person designated by the Council to conduct compliance checks and to otherwise enter, inspect,

and search the premises of the licensee during business hours and after business hours during the time when customers remain on the premises without a warrant.

(D) No on-sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

(E) Compliance with financial responsibility requirements of state law and of this Section is a continuing condition of any license.

SUBSECTION 20. HOURS AND DAYS OF SALE.

(A) The hours of operation and days of sale shall be those set by Minn. Stat. § 340A.504, as it may be amended from time to time, except that no sale of intoxicating liquor shall be made between the hours of 1:00 a.m. and 8:00 a.m. on any day.

(B) No person shall consume nor shall any on-sale licensee permit any consumption of intoxicating liquor or 3.2 percent malt liquor in an on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

(C) No on-sale licensee shall permit any glass, bottle, or other container containing intoxicating liquor or 3.2 percent malt liquor to remain upon any table, bar, stool, or other place where customers are served, more than 30 minutes after the time when a sale can legally occur.

(D) No person, other than the licensee and any employee, shall remain on the on-sale licensed premises more than 30 minutes after the time when a sale can legally occur.

(E) Any violation of any condition of this section may be grounds for revocation or suspension of the license.

SUBSECTION 21. MINORS ON PREMISES.

(A) No person under the age of 18 years shall be employed in any rooms constituting the place in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale, except that persons under the age of 18 may be employed as musicians or to perform the duties of a bus person, host or dishwashing services in places defined as a restaurant, hotel, motel or other multi-purpose building serving food in rooms in which intoxicating liquors or 3.2 percent malt liquor are sold at retail on sale.

(B) No person under the age of 21 years may enter a licensed establishment except to work, consume meals on premises that qualify as a restaurant, or attend social functions that are held in a portion of the premises where liquor is not sold.

SUBSECTION 22. RESTRICTIONS ON PURCHASE AND CONSUMPTION.

No person shall mix or prepare liquor for consumption in any public place of business unless it has a license to sell on-sale, or a permit from the Commissioner of Public Safety under the provisions of Minn. Stat. § 340A.414, as it may be amended from time to time, which has been approved by the Council, and no person shall consume liquor in any such place.

SUBSECTION 23. SUSPENSION AND REVOCATION.

(A) The Council shall either suspend for a period not to exceed 60 days or revoke any liquor license upon finding that the licensee has failed to comply with any applicable statute, regulation, or provision of this Section relating to liquor. Except in cases of lapse of proof of financial responsibility, no suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing pursuant to the Administrative Procedures Act, Minn. Stat. §§ 14.57

to 14.69, as it may be amended from time to time. The Council may act as the hearing body under that act, or it may contract with the Office of Hearing Examiners for a hearing officer.

(B) The following are the minimum periods of suspension or revocation which shall be imposed by the Council for violations of the provisions of this Section or Minn. Stat. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time:

(1) For commission of a felony related to the licensed activity, sale of alcoholic beverages while the license is under suspension or sale of intoxicating liquor where the only license is for 3.2 percent malt liquor, the license shall be revoked.

(2) The license shall be suspended by the Council after a finding under division (A) that the licensee has failed to comply with any applicable statute, rule, or provision of this Section for at least the minimum periods as follows:

(a) For the first violation within any three-year period, at least one day suspension in addition to any criminal or civil penalties which may be imposed.

(b) For a second violation within any three-year period, at least three consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(c) For the third violation within any three-year period, at least seven consecutive days suspension in addition to any criminal or civil penalties which may be imposed.

(d) For a fourth violation within any three-year period, the license shall be revoked.

(3) The Council shall select the day or days during which the license will be suspended.

(C) Lapse of required proof of financial responsibility shall effect an immediate suspension of any license issued pursuant to this Section or state law without further action of the Council. Notice of cancellation or lapse of a current liquor liability policy shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or of suspension or revocation of a license may request a hearing thereon and, if a request is made in writing to the Clerk, a hearing before the Council shall be granted within ten days. Any suspension under this division (B) shall continue until the Council determines that the financial responsibility requirements of state law and this Section have again been met.

(D) The provisions of Subsection 30 pertaining to administrative penalty may be imposed in addition to or in lieu of any suspension or revocation under this Section.

SUBSECTION 24-29. RESERVED FOR FUTURE USE.

Sections 24 to 29 are reserved for future use.

SUBSECTION 30. PENALTIES.

(A) Any person violating the provisions of this Section or Minn. Stat. Ch. 340A as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(B) The Council shall impose a civil penalty of up to \$2,000 for each violation of Minn. Stat. Ch. 340A, as it may be amended from time to time, and of this Section. Conviction of a violation in a court of law is not required in order for the Council to impose the civil penalty. A

hearing under the Administrative Procedures Act, Minn. Stat. §§ 14.57 to 14.69, as it may be amended from time to time, is not required before the penalty is imposed, but the Council shall hold a hearing on the proposed violation and the proposed penalty and hear any person who wishes to speak. Non-payment of the penalty is grounds for suspension or revocation of the license. The following is the minimum schedule of presumptive civil penalties which must be imposed in addition to any suspension unless the license is revoked:

- (1) For the first violation within any three-year period, \$500.
- (2) For the second violation within any three-year period, \$1,000.
- (3) For the third and subsequent violations within any three-year period, \$2,000.

(C) The term “violation” as used in Section 23 includes any and all violations of the provisions in this section, or of Minn. Stat. Ch. 340A, as it may be amended from time to time or any rules promulgated under that chapter as they may be amended from time to time. The number of violations shall be determined on the basis of the history of violations for the preceding three-year period. Revocation shall occur within 60 days following a violation for which revocation is imposed.

6.02 Social Hosts.

Section 1: **Purpose.** This section is enacted pursuant to Minn. Stat. §145A.05, subdivision 1, to protect public health and safety and discourage underage possession and consumption of alcohol by holding persons criminally responsible who host events or gatherings at which underage persons possess or consume alcohol, regardless of whether the host supplied the alcohol.

Section 2: **Definitions.** For purposes of this section, the following terms have the following meanings:

- A. “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey, rum, brandy, gin, or any other distilled spirits, including dilutions and mixtures thereof from whatever source or by whatever process produced.
- B. “Alcoholic beverage” means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.
- C. “Event or gathering” means any group of three or more persons who have assembled or gathered together for a social occasion or other activity.
- D. “Host” means to aid, conduct, allow, entertain, organize, supervise, control, or permit a gathering or event.
- E. “Parent” means a person having legal custody of a juvenile as a natural or adoptive parent or step-parent, as a legal guardian, or as a person to whom legal custody has been given by order of the court.

F. “Person” means any individual, partnership, co-partnership, corporation, or any association of one or more individuals.

G. “Underage person” is any individual under twenty-one (21) years of age.

Subsection 3: **Prohibited acts.** It is unlawful for any person to host an event or gathering, at any location at which:

A. alcoholic beverages are present; and

B. the person knows, or reasonably should know, that any underage person will or does consume any alcoholic beverage or possess any alcoholic beverage with the intent to consume it; and

C. the person fails to take reasonable steps to prevent possession or consumption by the underage person.

A person who hosts an event or gathering does not have to be present at the event or gathering to be in violation of this subdivision.

Subsection 4: **Exceptions.** Section 3 above shall not be construed to apply to:

A. Conduct solely between an underage person and that person’s parent while in the parent’s household.

B. Legally protected religious observances.

C. Conduct of intoxicating liquor licensees, or bottle club permit holders who are regulated by Minn Stat. Chapter 340A.

D. Situations in which an underage person is lawfully in possession of alcoholic beverages during the course and scope of that person’s employment.

Subsection 5: **Penalty.** Violation of Subsection 3 of 6.02 is a misdemeanor.

6.03 Sale, Possession, and Use of Tobacco, Tobacco-related Devices, Electronic Delivery Devices, and Nicotine or Lobelia Delivery Products

SUBSECTION 1. GENERAL.

Subd. 1. **Purpose.** Because the City of Comfrey recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products, and the

sale, possession, and use are violations of both State and Federal laws, and because studies, which the city hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 21 years and that those persons who reach the age of 21 years without having started smoking are significantly less likely to begin smoking, and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this Section shall be intended to regulate the sale, possession, and use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with illegal use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minnesota Statute §144.391, as it may be amended from time to time.

Subd. 2. Applicability and Jurisdiction. Pursuant to Minnesota Statute §461.12, this Section shall govern the licensing and regulation of the sale of tobacco, tobacco related devices, electronic delivery devices, and nicotine and lobelia delivery products in the City of Comfrey.

Subd. 3. Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice versa. The term “shall” means mandatory and the term “may” means permissive. The following terms shall have the definitions given to them:

- a. “Compliance Checks” shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are following and complying with the requirements of this Section. Compliance checks shall involve the use of minors as authorized by this Section. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations related to tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.
- b. “Electronic Delivery Device” shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such a product whether sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal

sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

- c. “Individually Packaged” shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.
- d. “Loosies” shall mean the common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually.
- e. “Minor” shall mean any natural person who has not yet reached the age of twenty-one (21) years.
- f. “Movable Place of Business” shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorize for sales transactions.
- g. “Nicotine or Lobelia Delivery Product” shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- h. “Retail Establishment” shall mean any place of business where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.
- i. “Sale” shall mean any transfer of goods for money, trade, barter, or other consideration.
- j. “Self-Service Merchandising” shall mean open displays of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in any manner where any person shall have access to the tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products, without the assistance or intervention of the licensee or the licensee’s employee or other personnel or any placement of a retail roll-your-own machine in an open area of a retail establishment where any person shall have access to the machine without

- the assistance or intervention of the licensee or the licensee's employee or other personnel. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.
- k. "Smoking" shall mean inhaling or exhaling smoke from any lighted or heated cigarette, cigar, pipe, or any other lighted or heated tobacco or plant product, or inhaling or exhaling vapor from an electronic delivery device or any nicotine or lobelia delivery product. Smoking shall include carrying a lighted or heated cigarette, cigar, or pipe or any other lighted or heated tobacco or plant product intended for inhalation or carrying an electronic delivery device or nicotine or lobelia delivery product that is turned on or otherwise activated.
 - l. "Tobacco" includes cigarettes and any product containing, made or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component part, or accessory of a tobacco product; cigars; cheroots, stogies; perique; granulated, plug-cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobaccos; fine-cut and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
 - m. "Tobacco-related device" shall mean any tobacco product as well as pipes, rolling papers, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products or the inhalation of vapor from an electronic delivery device. Tobacco-related devices shall include accessories or components of tobacco-related devices which may be marketed or sold separately.
 - n. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

SUBSECTION 2. LICENSE. No person shall sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product without first having obtained a license to do so from the city.

Subd. 1. Application. An application for a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. All applicants shall have the completed application and fee returned to the City of Comfrey City Clerk prior to the beginning of the year in which the license sought will be valid. Delay in submission may result in a period of time in which the applicant may not sell any tobacco, tobacco-related products, electronic delivery devices or nicotine or lobelia delivery products. Upon receipt of a completed application, the City of Comfrey City Clerk shall forward the application to the City Council of the City of Comfrey for action at its next regularly scheduled meeting. If the City Clerk determines that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2. Action. The City Council may either approve or deny the license, or it may delay action for such reasonable period of time necessary to complete an investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Council shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.

Subd. 3. Term. All licenses issued hereunder shall be valid for one calendar year, commencing on January 1st and ending on December 31st. License fees for licenses issued after January 1st shall be prorated for the year issued.

Subd. 4. Revocation or Suspension. Any license issued under this Section may be revoked or suspended as provided in the Violations and Penalties section of this Section.

Subd. 5. Transfers. All licenses issued under this Section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

Subd. 6. Movable Place of Business. No license shall be issued to a movable place of business. Only fixed location businesses shall be eligible to be licensed under this Section.

Subd. 7. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 8. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made

at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.

Subd. 9. Smoking Prohibited in Tobacco Product Shop. Smoking shall not be permitted and no person shall smoke indoors at any location with a tobacco retailer license. Smoking for the purpose of sampling tobacco, tobacco-related devices, electronic delivery devices, nicotine or lobelia delivery products or any other plant products shall be prohibited.

Subd. 10. Issuance as Privilege and Not a Right. The issuance of a license issued under this Section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

Subd. 11. Fees. No license shall be issued under this Section until the appropriate license fee shall be paid in full. The licensing fee will be determined by the City of Comfrey City Council each year. Any new business that submits a late application will be charged a prorated fee based upon the remaining months of the current year.

Subd. 12. Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this Section; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section:

1. The applicant is under the age of twenty-one (21) years.
2. The applicant has been convicted within the past five (5) years of any violation of a Federal, State, or local law, City Code provision, or other regulation relating to tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.
3. The applicant has had a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products revoked within the preceding twelve (12) months of the date of application.
4. The applicant fails to provide any information required on the application, or provides false or misleading information.
5. The applicant is prohibited by Federal, State, or other local law, City Code, or other regulation, from holding such a license.

SUBSECTION 3. SALES AND COMPLIANCE

Subd. 1. Prohibited Sales. It shall be a violation of this Section for any person to sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product:

1. To any person under the age of twenty-one (21) years.

2. By means of any type of vending machine, unless minors are at all times prohibited from entering the licensed establishment.
3. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product and whereby there is not a physical exchange of the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product between the licensee or the licensee's employee and the customer.
4. By means of loosies as defined in Section 1. of this Section.
5. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
6. By any other means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law, City Code provision, or other regulations.

Subd. 2. Self-Service Sales. It shall be unlawful for a licensee under this Section to allow the sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employ and whereby there is not a physical exchange of the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product between the licensee or his or her clerk and the customer. All tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products shall either be stored behind the counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at the time this Section is adopted shall comply with this section within ninety (90) days following the effective date of this Section.

Subd. 3. Responsibility. All licensees under this Section shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products on the licensed premises, and the sale of any such items by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this Section, State, or Federal law, or other applicable laws or regulations.

Subd. 4. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the Chief of Police, or other official during regular business hours. From time to time; but at least once per year, the Chief of Police shall conduct compliance checks by engaging, with written consent of their parents or guardians, minors over the age of seventeen (17) years but less than twenty-one (21) years, to enter the licensed premise to attempt to purchase tobacco, tobacco-related devices, electronic

delivery devices, or nicotine or lobelia delivery products, with the prior written consent of a parent or guardian if the person is under the age of 18. Minors used for the purpose of compliance checks shall be supervised by city law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products when such items are obtained or attempted to be obtained as part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age when they are asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by State or Federal laws, educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

SUBSECTION 4. OTHER ILLEGAL ACTS. Unless otherwise provided, the following acts shall be a violation of this Section:

Subd. 1. **Illegal Sales.** It shall be a violation of this Section for any person to sell or otherwise provide tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product to any minor.

Subd. 2. **Illegal Possession.** It shall be a violation of this Section for any minor to have in his or her possession any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product. This subdivision shall not apply to minor lawfully involved in a compliance check.

Subd. 3. **Illegal Use.** It shall be a violation of this Section for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Subd. 4. **Illegal Procurement.** It shall be a violation of this Section for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, and it shall be a violation of this Section for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 5. **Use of False Identification.** It shall be a violation of this Section for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the minor has been modified or tampered with, to represent an age older than the actual age of the minor.

SUBSECTION 5. VIOLATIONS.

Subd. 1. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally, or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

Subd. 2. Hearings. If a person accused of violating this Section requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Subd. 3. Hearing Officer. The City Council of the City of Comfrey shall serve as the hearing officers.

Subd. 4. Decision. If the hearing officers determine that a violation of this Section did occur, that decision, along with the hearing officers' reasons for finding a violation and the penalty to be imposed under Section 6 of this Section, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officers find that no violation occurred or find grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subd. 5. Appeals. Appeals of any decision made by the hearing officers shall be filed in the district court for the jurisdiction of the county in which the alleged violation occurred.

Subd. 6. Misdemeanor Prosecution. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this Section. If the city elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 7. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Subd. 8. Exceptions and Defenses. Nothing in this Section shall prevent the providing of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to a violation of this Section for a person to have reasonably relied on proof of age as described by State law.

SUBSECTION 6. PENALTIES.

Subd. 1. Licenses and Employees. Any licensee, and any employee of a licensee, found to have violated this Section shall be charged an administrative penalty of seventy five dollars (\$75.00) for a first violation of this Section; two hundred dollars

(\$200.00) for a second offense at the same licensed premises within a twenty-four (24) month period; and two hundred fifty dollars (\$250.00) for a third or subsequent offense at the same location within a twenty-four (24) month period. In addition, after the third offense, the license shall be suspended for not less than seven (7) days. The City of Comfrey City Clerk will notify the vendor via certified mail with dates of suspension unless a request for hearing is made by the vendor, all penalties for violations must be paid within ten (10) working days after the signed date on the certified mail receipt. If the penalty is not received at the City of Comfrey City Clerk's office within this ten (10) day period, the vendor will be subject to an additional penalty on a per-day-basis at a rate of an additional five dollars (\$5.00) per day, not to exceed the amount of the initial penalty charged.

Subd. 2. Other Individuals. Other individuals, other than minors regulated by Subdivision 3 of this Section, found to be in violation of this Section shall be charged an administrative penalty of seventy-five dollars (\$75.00) for a first violation of this Section; two hundred dollars (\$200.00) for a second offense within a twenty-four (24) month period; and two hundred fifty dollars (\$250.00) for a third or subsequent offense within a twenty-four (24) month period. All penalties for violations must be paid within ten (10) working days after the signed date on the certified mail receipt. If the penalty is not received at the City of Comfrey Clerk/Treasurer office within this ten (10) day period, the individual will be subject to an additional penalty on a per-day basis at a rate of an additional five dollars (\$5.00) per day, not to exceed the amount of the initial penalty charged. If not paid within ten (10) days, the matter may be turned over for criminal prosecution.

Subd. 3. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, shall be subject to prosecution under Minnesota Statute 609.685.

Subd. 4. Misdemeanor. Nothing in this Section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this Section 6.03.

Subd. 5. Failure to Pay Fine. Failure to pay a fine as levied pursuant to this Section shall be grounds for termination or suspension of the vendor's license to sell tobacco.

SUBSECTION 7. EFFECTIVENESS

Subd. 1. Severability and Savings Clause. If any section or portion of this Section shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this Section.

CHAPTER 7

PUBLIC NUISANCES, ENVIRONMENTAL HEALTH AND SAFETY

7.01 Public Nuisances

SUBSECTION ONE. PUBLIC NUISANCE PROHIBITION.

A person must not act, or fail to act, in a manner that is or causes a public nuisance. For purpose of this Section, a person that does any of the following is guilty of maintaining a public nuisance:

- (A) Maintains or permits a condition which injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public; or
- (B) Interferes with, obstructs, or renders dangerous for passage, any public highway or right-of-way, or waters used by the public; or
- (C) Does any other act or omission declared by law or this Section to be a public nuisance.

SUBSECTION TWO. PUBLIC NUISANCES AFFECTING HEALTH.

The following are hereby declared to be nuisances affecting health:

- (A) The exposed accumulation of decayed or unwholesome food or vegetable matter;
- (B) All diseased animals running at large;
- (C) All ponds or pools of stagnant water;
- (D) Carcasses of animals not buried or destroyed within twenty-four (24) hours after death;
- (E) Accumulation of manure, refuse, or other debris;
- (F) Garbage cans which are not rodent-free or fly-tight, or which are so maintained as to constitute a health hazard or to emit foul and disagreeable odors;
- (G) The pollution of any public well or cistern, stream or lake, canal or body of water by sewage, industrial waste, or other substances;
- (H) All noxious weeds and other rank growths of vegetation upon public or private property;
- (I) Dense smoke, noxious fumes, gas, soot, or cinders in unreasonable quantities;

SUBSECTION THREE. PUBLIC NUISANCES AFFECTING MORALS AND DECENCY.

The following are hereby declared to be nuisances affecting public morals and decency:

- (A) All gambling devices, slot machines, and punch boards, except otherwise authorized and permitted by federal, state, or local law;
- (B) Betting, bookmaking, and all apparatus used in those occupations;
- (C) All houses kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill fame, and bawdy houses;

SUBSECTION FOUR. PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following are declared to be nuisances affecting public peace and safety:

- (A) All snow and ice that is not removed from public sidewalks within twenty-four (24) hours after the snow or other precipitation causing the condition has ceased to fall;
- (B) All snow, ice, dirt, and rubbish remaining on a public sidewalk fronting on Brown Street, from its intersection with Field Street to its intersection with Broad Street, more than 12 hours after its deposit thereon;
- (C) All trees, hedges, billboards, or other obstructions which prevent people from having a clear view of all traffic approaching an intersection;
- (D) All dead trees;
- (E) All wires and limbs of trees that are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles;
- (F) Any person participating in any party or other gathering that causes the unreasonable disturbing of the peace, quiet, or repose of another person;
- (G) All unnecessary and annoying vibrations;
- (H) Obstructions and excavations affecting the ordinary public use of streets, alleys, sidewalks, or public grounds, except under conditions as are permitted by this Section or other applicable law;
- (I) Radio aerials or television antennae erected or maintained in a dangerous manner;
- (J) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk that causes large crowds or people to gather, obstructing traffic and the free use of the street or sidewalk;
- (K) All hanging signs, awnings, and other similar structures over streets and sidewalks, so situated as to endanger public safety, or not constructed and maintained as provided by City Code;
- (L) The allowing of rainwater, ice, or snow to fall from any building or structure upon any street or sidewalk or to follow across any sidewalk;
- (M) Any barbed wire fence located within three (3) feet of a public sidewalk or way;
- (N) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public;
- (O) Wastewater cast upon or permitted to flow upon streets or other public properties;
- (P) Accumulations in the open of discarded or disused machinery, household appliances, automobile bodies or other materials in a manner conducive to the harboring of rats, mice, snakes, or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health, or other safety hazards from such accumulation;

- (Q) Any well, hole, or similar excavation that is left uncovered or in such other condition as to constitute a hazard to any child or other person coming on the premises where it is located;
- (R) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter, or ditch with trash or other materials;
- (S) The placing or throwing on any street, sidewalk, or other public property of any glass, tacks, nails, bottles, or other substances that may injure any person or animal or damage any pneumatic tire when passing over such substance;
- (T) The depositing of garbage or refuse on a public right-of-way or on adjacent private property;
- (U) Reflected glare or light from private exterior lighting exceeding 0.5 footcandles as measured on the property line of the property where the lighting is located when abutting any residential parcel, and one (1) footcandle when abutting any commercial or industrial parcel;
- (V) The moving, transporting, carrying, or otherwise causing to be moved, any snow, ice, leaves, grass clippings, or rubbish accumulations from private property to or upon the boulevards or public streets, alleys, rights-of-ways, and crosswalks of the City of Comfrey; and
- (W) All other conditions or things that are likely to cause injury to the person or property of another.

SUBSECTION FIVE. NOISE VIOLATIONS.

- (A) **Prohibited noises.** The following are declared to be nuisances affecting public health, safety, peace, or welfare:
 - (1) Any distinctly and loudly audible noise that disturbs, injures, or endangers the health, peace, safety, or welfare of any person, or precludes their enjoyment of property, or affects their property's value (this general prohibition is not limited by any specific restrictions provided in this Section);
 - (2) The use of any vehicle so out of repair or so loaded as to create loud grating, grinding, rattling, or other noise;
 - (3) The discharging of the exhaust or permitting the discharge of the exhaust of any internal combustion engine, motor boat, motor vehicle, motorcycle, all-terrain vehicle (ATV), snowmobile, or any recreational device, except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations;
 - (4) Any loud or excessive noise in the loading, unloading, or unpacking of any vehicle; and
 - (5) The use or operation, or permitting the use or operation, of any radio receiving set, television set, musical instrument, music device, paging system, machine, or other device for producing or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet, and comfort of any person nearby.

(B) Hourly restriction of certain operations.

- (1) **Domestic power equipment.** No person shall operate a power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, drill, or other similar domestic power equipment, except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday. Snow removal equipment is exempt from this provision.
- (2) **Construction activities.** No person shall engage in or permit construction activities involving the use of any kind of electric, diesel, or gas-powered machine or other power equipment, except between the hours of 7:00 a.m. and 10:00 p.m. on any weekday or between the hours of 9:00 a.m. and 9:00 p.m. on any weekend or holiday.
- (3) **Radios, music devices, paging systems, and the like.** The operation of any device referred to in subdivision (A) (5) between the hours of 10:00 p.m. and 7:00 a.m. in a manner so as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building shall be prima facie evidence of a violation of this section.

SUBSECTION SIX. NUISANCE PARKING AND STORAGE.

Violation of City Code Chapter 10, Section 10.03, regarding parking and storing of vehicles shall constitute a nuisance.

SUBSECTION SEVEN. MOTOR VEHICLES.

- (A) **Declaration of nuisance.** Any motor vehicle described in this section shall constitute a hazard to the health and welfare of the residents of the community as such vehicles can harbor noxious diseases, furnish a shelter and breeding ground for vermin, and present physical danger to the safety and well-being of children and citizens. Motor vehicles also contain various fluids which, if released into the environment, can and do cause significant health risks to the community.
- (B) **Motor Vehicles.** It shall be unlawful to keep, park, store, or abandon any motor vehicle that is partially dismantled, used for repair of parts or as a source of repair or replacement parts for other vehicles, kept for scrapping, dismantling, or salvage of any kind, the interior of which is not secured from entry by animals, or which is not properly licensed for operation within the state, pursuant to Minn. Stat. § 168B.011, subd. 3, as it may be amended from time to time.
- (C) **Screening.** This section does not apply to a motor vehicle enclosed in a building and/or kept out of view from any street, road, or alley, and which does not foster complaint from a resident of the city. Privacy fencing is permissible.

SUBSECTION EIGHT. DUTIES OF CITY OFFICERS.

City officials may apply and enforce any provision of this Section relating to public nuisances within this jurisdiction. Any peace officer or other designated city official shall have the power to inspect private premises and take all reasonable precautions to prevent the commission and maintenance of public nuisances. Except in emergency situations of imminent

danger to human life and safety, no peace officer or designated city official will enter private property for the purpose of inspecting or preventing public nuisances without the permission of the owner, resident, or other person in control of the property, unless the officer or person designated has obtained a warrant or order from a court of competent jurisdiction authorizing entry.

SUBSECTION NINE. ABATEMENT PROCEDURE.

(A) **Procedure.** Whenever the peace officer or other designated official determines that a public nuisance is being maintained or exists on the premises in the city, the official shall notify in writing the owner of record or occupant of the premises of such fact and order that the nuisance be terminated or abated. The notice of violation shall specify the steps to be taken to abate the nuisance and the time within which the nuisance is to be abated. If the notice of violation is not complied with within the time specified, the official shall report that fact forthwith to the City Council. Thereafter, the City Council may, after notice to the owner or occupant and an opportunity to be heard, determine that the condition identified in the notice of violation is a nuisance and further order that if the nuisance is not abated within the time prescribed by the City Council, the city may seek injunctive relief by serving a copy of the City Council order and notice of motion for summary enforcement or obtain an administrative search and seizure warrant and abate the nuisance.

(B) **Notice.** Written notice of the violation; notice of the time, date, place, and subject of any hearing before the City Council; notice of the City Council order; and notice of motion for summary enforcement hearing shall be served by a peace officer or designated official on the owner of record or occupant of the premises either in person or by certified or registered mail. If the premise is not occupied, the owner of record is unknown, or if the owner of record or occupant refuses to accept notice, notice of the violation shall be served by positing it on the premises.

(C) **Emergency procedure; summary enforcement.** In cases of emergency, where delay in abatement required to complete the procedure and notice requirements as set forth in subdivisions (A) and (B) of this section will permit a continuing nuisance to unreasonably endanger public health, safety, or welfare, the City Council may order summary enforcement and abate the nuisance. To proceed with summary enforcement, the peace officer or other designated official shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement will unreasonably endanger public health, safety, or welfare. The officer or designated official shall notify in writing the occupant or owner of the premises of the nature of the nuisance, whether public health, safety, or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in subdivision (A) of this Subsection and may order that the nuisance be immediately terminated or abated. If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

(D) **Immediate abatement.** Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

(E) **Unlawful parties or gatherings.** When law enforcement determines that a gathering is creating such a noise disturbance as prohibited under Subsection Four, Subdivision E, the

officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disburse immediately. No person shall refuse to leave after being ordered to do so by law enforcement. Every owner or tenant of such premises who has knowledge of the disturbance shall make every reasonable effort to see that the disturbance is stopped.

(F) **Judicial remedy.** Nothing in this section shall prevent the city from seeking a judicial remedy when no other adequate administrative remedy exists.

SUBSECTION TEN. RECOVERY OF COST.

(A) **Personal liability.** The owner of the premises on which a nuisance has been abated by the city, or a person who has caused a public nuisance on property not owned by that person, shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the city clerk or other city official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the city clerk.

(B) **Assessment.** After notice and hearing as provided in Minn. Stat. § 429.061, as it may be amended from time to time, if the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the city clerk shall, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other such charges as well as other charges for current services to be assessed under Minn. Stat. § 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against the property under that statute and any other pertinent statutes for certification to the county auditor and collection along with current taxes the following year or in annual installments, not exceeding ten (10), as the City Council may determine in each case.

SUBSECTION ELEVEN. PENALTY.

Any person convicted of violating any provision of this Section is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment for not more than ninety (90) days, or both, plus the costs of prosecution in either case.

7.02 Loud and Unnecessary Noises

Subsection 1. It shall be unlawful for any person to make, or cause to be made, any loud or unusual noise which disturbs or affects the health or peace of others. The following acts are declared to be loud, unnecessary or unusual noises in violation of this section, but such enumeration shall not be deemed to be exclusive:

- a. Operation of a motor vehicle in such a manner as to produce squealing of tires, exhaust noise audible at a distance of three hundred (300) feet, or use of “engine breaks.”

- b. Shouting, yelling, or singing which is audible at a distance of one hundred (100) feet.
- c. Operation of fixed machinery or equipment in a manner which is audible within an area zoned residential at a distance of one hundred (100) feet from the outer boundary of such residential zone.
- d. Operation of excavation equipment, front end loaders, and other construction or demolition equipment between the hours of 12:00 o'clock midnight and 5:00 o'clock a.m., in a manner audible in an area zoned residential at a distance of one hundred (100) feet from the outer boundary of such residential zone.

Subsection 2. No person shall use or operate any electronic sound system or audio equipment, including but not limited to, any compact disc player, cassette tape player, AM-FM radio, citizens band radio, paging system or any other device designed to produce or reproduce audio sound, in such an unreasonably loud manner that it disturbs the peace, quiet and comfort of others or interferes with the right of another to use peacefully his/her property or public property without disturbance.

It shall be presumed that a violation of this Section has occurred when any electronic sound system or audio equipment is operated in a manner in which it is plainly audible at a distance of 50 feet or more between the hours of 10:00 p.m. and 8:00 a.m. It shall be presumed that violation of this Section has occurred when any electronic sound system or audio equipment is operated in a manner in which it is plainly audible at a distance of 100 feet or more between the hours of 8:00 a.m. and 10:00 p.m.

Subsection 3. When sound violating this section is produced by an electronic sound system or audio equipment that is located in or on a vehicle, the vehicle's owner is guilty of the violation, provided that if the vehicle's owner is not present, the person in charge of the vehicle at the time of the violation is guilty of the violation.

Subsection 4. This section shall not apply to sound produced by the following:

- a. Amplifying equipment used in connection with activities for which a permit has been granted or in connection with any organized school, church, or other event or activity open to the public;
- b. Anti-theft devices;
- c. Church bells, chimes or carillons, school bells or emergency civil defense warning signals; and
- d. Authorized emergency vehicles or other vehicles required by law to be equipped with sound devices.
- e. Operation of City owned equipment or operation of equipment pursuant to a contract with the City.

7.03 Breach of Peace, Posting Notices, Indecent Exposure, Fire Arms, Public Intoxication, Fire Safety.

SUBSECTION 1:

It shall be unlawful for any person to make or assist in making any riot, noise, or disturbance in this City, or participate in any disorderly assemblage, or disturb any public, religious or other lawful assemblage of persons, or in any manner to disturb the peace and quiet of the City.

SUBSECTION 2:

It shall be unlawful for any person in any manner to post up any written or printed bill, notice, or advertisement on any part of the outer walls of any buildings within the limits of the City of Comfrey without first having obtained consent of the owner thereof.

SUBSECTION 3:

It shall be unlawful for any person to appear in a public place in a state of nudity. Nudity is defined as follows: The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernible turgid state.

SUBSECTION 4:

No person shall discharge any firearms within the City.

SUBSECTION 5:

It shall be unlawful for any person to be intoxicated on any of the streets or alleys, or in any other public place in the City of Comfrey.

SUBSECTION 6:

It shall be unlawful for any person to willfully and without cause, create or make any false alarm of fire, or make any bonfire in any street or alley of this City, or to make any recreational fire in any place except in an approved fire ring or pit.

7.04 Curfew.

SUBSECTION 1: CURFEW FOR MINORS: It shall be unlawful for any person fifteen (15) years of age or younger to be or loiter upon the streets or public places after 10:00 p.m. on Sunday, Monday, Tuesday, Wednesday, or Thursday, or after 12:00 midnight on Friday or Saturday. It shall be unlawful for any person sixteen (16) or seventeen (17) years of age to be or loiter upon the streets or public places after 12:00 midnight on Sunday, Monday, Tuesday, Wednesday, or Thursday, or after 1:00 a.m. on Friday or Saturday.

SUBSECTION 2: EXCEPTED ACTIVITIES: The provisions of Subsection 1 shall not apply to any minor person who is engaged in lawful employment, going to or returning from said employment, or to any minor person who is attending, going to, or returning from, any school-sponsored, church-sponsored, or community-sponsored athletic, artistic, educational, or social activity or event.

SUBSECTION 3: VIOLATION OF CURFEW – PARENT LIABILITY: It shall be unlawful for any parent, guardian, or other person having the legal care or custody of any minor person under the age of eighteen (18) to allow or permit said minor to be or loiter upon the streets or public places after the hours provided in Section 1, unless said minor is accompanied by a person who is of lawful age and who is in charge of said minor person, or said minor is engaged in an activity provided for in Subsection 2.

SUBSECTION 4: MINOR PENALTY: Any minor under the age of eighteen (18) years who shall violate the provisions of this Section shall be deemed a “juvenile Petty Offender” within the meaning of Minnesota Statutes Section 260.011 *et seq.*

SUBSECTION 5: PARENT PENALTY: Any parent, guardian, or other adult person having the legal care or custody of any minor person under the age of eighteen (18) who shall violate the provisions of Subsection 3, above, shall be guilty of a misdemeanor.

7.05 Open Burning, Leaves.

SUBSECTION 1

Except as herein otherwise provided, open burning shall be prohibited with the City of Comfrey.

SUBSECTION 2

The open burning of leaves between the hours of 1:00 p.m. and 7:00 p.m. shall be allowed within the city limits of Comfrey, Minnesota, between the 15th of September until the 1st of December, provided said burning is continually supervised by a person of suitable age and discretion and is conducted in such a manner as to not endanger or impose a threat to the safety of any persons or property.

SUBSECTION 3

No person shall start or allow any open burning of leaves on any property in the City of Comfrey without first having obtained an Open Burning Permit.

SUBSECTION 4

An Open Burning Permit shall be obtained by making application on a form prescribed by the Department of Natural Resources (DNR) to the City Clerk. An Open Burning Permit shall require a non-refundable application fee of \$5.00.

SUBSECTION 2-DUTY OF THE COMFREY POLICE

A police officer of the City of Comfrey shall order that any burning leaves be extinguished when, in the opinion of said officer, such burning is unsafe or hazardous, endangers property or the health and safety of any individual, is unsupervised, or is supervised by an individual who is not of suitable age and discretion.

SUBSECTION 3-FAILURE TO EXTINGUISH; OTHER BURNING PROHIBITED

It shall be unlawful for any person to refuse to extinguish burning leaves when ordered to do so by a police officer of the City of Comfrey. It shall be unlawful to burn any material other than leaves.

When ordered to extinguish burning leaves by a police officer, it shall be unlawful to resume the burning of dried leaves in the same or similar manner.

SUBSECTION 4-SUITABLE AGE AND DISCRETION DEFINED

Any individual who is at least 18 years of age and under no legal disability is presumed to be of suitable age and discretion to supervise the burning of leaves under this Section.

7.06 Planting, Maintenance, and Removal of Trees and Shrubs.

1. Purpose. It is hereby declared to be the policy of the City of Comfrey to encourage citizen participation in the planting and maintenance of trees in public rights-of-way; to regulate the transplanting or removal of such trees and shrubs in order to eliminate and guard against dangerous conditions which may result in injury to persons using the streets, sidewalks, or property of the City; to prevent damage to any public sewer or water main, street, sidewalk, or other public property; and to guard all trees and shrubs within the City against the spread of disease or pests. It is the intent of the City Council that the provisions of this Section shall apply to all trees, shrubs, or plants growing or hereafter planted in or upon any public right-of-way or other premises owned or controlled by the City, and also to all trees or shrubs growing or to be planted in or upon any private premises which shall threaten the lives, health, safety, or welfare of the public or of the property owned or controlled by the City.
2. Box Elder, Cottonwood and Dutch Elm Prohibited. No person, firm or corporation shall plant or cause to be planted any box elder or cottonwood or Dutch elm tree at any place within the limits of this City or allow to remain standing any diseased trees, except that the planting of seedless cottonwood trees shall not be prohibited.
3. Trees prohibited on boulevards. No pine or other coniferous tree or shrub of any variety, and no fruit or nut-bearing trees, shall be planted on any boulevard.
4. Trimming and cutting trees. Trees or shrubs, standing in or upon any public highway, boulevard, alley, public place or private property on any lot or parcel of land adjacent to any public highway, boulevard alley or public place in this City, shall under the supervision of the Public Works Director at all times be kept trimmed by the owner or owners of the lot or parcel of land on or adjacent to which such trees or shrubs are growing, or standing, so as not to interfere with persons using the public streets, sidewalks, alleys and public places in this City, and any such owner or owners shall remove all shrubs, branches and trees as endanger the life, limb or property of other persons, or which interfere with the use of such streets, sidewalks, alleys, or public places for the purpose for which the same are intended. Trees and shrubs standing in or upon private property and extending over a public right-of-way shall be kept trimmed by the owner or occupant thereof so that the lowest branches projecting over the public street provide a clearance of not less than 13-1/2 feet and over all other public places of not less than eight feet. The Public Works Director may waive the provisions of this Section for newly planted trees if he determines that they do not interfere with public travel, obstruct the light of any street light, or endanger public safety. Any tree or shrub not trimmed as herein provided is hereby declared to be a public nuisance.

5. Obstructions to visibility at intersections. No sign, fence, wall, hedge, planting or other obstruction to vision, extending from a height of two and one-half (2.5) feet to ten (10) feet above the established street grade, shall be permitted within the area formed by the intersection of right-of-way lines at corner lots and a straight line joining the right-of-way lines at points which are twenty-five (25) feet in distance from the intersection of the right-of-way lines at the corner of the lot. This Section shall not apply to mail boxes, public utility poles, street name markers, official traffic signs and control devices, fire hydrants, and trees with no visual obstruction (except tree trunk) up to the height of ten (10) feet above the established street grade.

6. Obstructions near alley right-of-way. No tree, shrub or hedge shall be planted within four feet of any alley right-of-way, and all trees, shrubs and hedges adjacent to any alley right-of-way shall be kept trimmed so that no part thereof extends within two feet of the alley right-of-way.

7. Violations and Remedies.
 - a. Upon determination that a violation of this Section exists, the City shall send written notice of the violation to the owner or occupant of the lot requiring the owner or occupant to remove all obstructions violating the provisions of this Section within five (5) days after receipt of the written notice.
 - b. Upon failure of the owner or occupant of a lot to comply with the provisions of this Section within five (5) days after receipt of written notice from the City to do so, the City may enter upon such lot and remove therefrom any and all obstructions found to be in violation of this Section. Where trees, shrubs, hedges or other plantings constitute the violation of this Section, the City shall have the authority to either trim or remove the same based upon the most cost effective method.
 - c. In the event an obstruction violating this Section is located on City-owned right-of-way, such obstruction may be trimmed or removed by the City, whichever is applicable; provided, however, that prior to removal the City shall give written notice to the owner or occupant of the property adjacent to the City-owned right-of-way on which the violation of this Section is located of the City's intention to remove the obstruction within five (5) days from the receipt of the written notice.

7.07 Weeds and Grass Abatement.

SUBSECTION 1- WEED AND GRASS NUISANCE DEFINED

Any weeds, ornamental or other grasses, whether noxious as defined by law or not, growing upon any lot or parcel of land outside the traveled portion of any street or alley in the city to a height greater than ten (10) inches or which have gone or are about to go to seed are a nuisance. The owner and the occupant shall abate or prevent such nuisance on such property and on land outside the traveled portion of the street or alley abutting on such property.

SUBSECTION 2-NOTICE TO OWNER OR OCCUPANT

When the owner and occupant permit a weed and grass nuisance to exist in violation of Subsection 1, the city clerk shall serve notice upon the owner of the property, if the owner resides in the City of Comfrey and can be found, or upon the occupant in other cases, by

registered or certified mail or by personal service. Said notice shall order the owner or occupant to have such weeds and grass cut and removed within 10 days after receipt of the notice and shall state that in case of noncompliance such work will be done by the City of Comfrey at the expense of the owner and that if unpaid, the charge for such work will be made a special assessment against the property concerned. When no owner, occupant, or agent of the owner or occupant can be found, the provision for notice shall not apply.

SUBSECTION 3-REMOVAL BY CITY

If the owner or occupant fails to comply with the notice within 10 days after receipt, or if no owner, occupant, or agent of the owner or occupant can be found, city employees may cut and remove such weeds or grass. The clerk shall keep a record showing the cost of such work attributable to each separate lot and parcel.

7.08 Drones.

Subsection 1. Recitals.

WHEREAS, drones, which are unmanned aircraft that can fly under the control of a remote pilot or via a geographic positions system (GPS) guided autopilot mode, have become increasingly available to private citizens for personal and recreational uses due to their declining costs; and

WHEREAS, drones can fly at altitudes below the navigable airspace (generally at 400 feet) which is under the jurisdiction, regulation and control of the Federal Aviation Administration (FAA); and

WHEREAS, drones may be equipped with high definition camera, night vision cameras and infrared-see-through scopes; and

WHEREAS, drones can be used to fly above private residences and to hover outside a resident's window or in the resident's backyard without the knowledge of the resident, who has a reasonable expectation of privacy in his or her home and in his or her backyard; and

WHEREAS, there are no existing regulations regarding who may purchase a drone which presents a safety risk to residents in that drones may be purchased and operated by persons with certain criminal backgrounds or propensities, such as but not limited to domestic violence, theft, burglary, breaking and entering, trespass, assault and battery.

Subsection 2. Definitions. "Drone" shall mean an unmanned aircraft that can fly under the control of a remote pilot or by a geographic positions system (GPS) guided autopilot mechanism.

Subsection 3. Prohibition. Drones are prohibited from flying in any airspace within or over any residentially zoned area in the city, unless otherwise exempt under this chapter.

Subsection 4. Exemptions. This chapter shall not prohibit the use of drones by any law enforcement agency of the city, state or federal government for lawful purposes and in a lawful manner. Additionally, this chapter shall not prohibit the use of drones during an energy audit.

Subsection 5. Violations. Any person found to be in violation of the provisions of Section 7.08 shall be guilty of a misdemeanor.

CHAPTER 8 PUBLIC UTILITIES

8.01 Charges, generally.

Subsection 1:

Prior to the commencement of providing water, sewer, and garbage service to any premises, a deposit of \$150.00 shall be required to be paid to the City Clerk. Upon termination of service, the deposit shall be applied to payment of any unpaid charges, and the balance, plus interest at the rate required by law, shall be refunded to the person making the deposit. If prior to termination of service the customer has a payment history of no delinquencies for a period of twelve (12) consecutive months, the deposit, plus interest at the rate required by law, shall be refunded to the person making the deposit in the month following the end of such twelve (12) month period.

Subsection 2:

Charges for water, sewer and garbage shall be the primary responsibility of the owner of the premises served, and shall be billed to the owner unless otherwise authorized in writing by the owner and the tenant. The City may collect unpaid charges by a civil action against the owners, tenant or both, at the option of the City, or as otherwise provided in this Chapter.

Subsection 3:

All charges for water, sewer and garbage service are hereby made a lien upon the premises served. Any such charges which remain unpaid more than thirty (30) days after the date when due, when authorized by resolution of the City Council, shall be certified to the County Auditor for collection on the tax rolls against said premises in the same manner as other real estate taxes and special assessments. Such certification shall specify the amount of unpaid charges, the amount of any penalty, the description of the premises served, and the name of the owners of the premises.

8.02 Water Service.

SUBSECTION 1:

That the rules, regulations, and rates hereinafter named shall be a part of the contract with every person, company, and corporation who is supplied with water through the water system of said City; and when any of the provisions are violated, the water shall be immediately cut off from the building or place of such violation, although two or more consumers may be receiving water through the same pipe, and shall not be turned on again except by order of the City Council, upon payment of all expenses of shutting off and turning on of said water, and all such other expenses as the council shall deem proper;

SUBSECTION 2:

That the following rules and regulations for the government of water consumers, licensed plumbers, and others are hereby adopted and established:

1. All water usage fees shall be payable monthly on the date established by the City

- Council. Any fees for connection to the water system shall be payable in advance.
2. The water shall not be turned into any house or service pipe except upon the order of the City Maintenance Department, and plumbers are strictly prohibited from turning water into any building or service pipe except by such permission. This rule shall not be intended or construed to prevent the plumber from turning on water to test pipes.
 3. All persons using water shall keep the hydrants, taps, hose, water closet, urinals, baths, or other fixtures allotted to their use closed except when obtaining water for their use and shall be responsible for any damage or injury that may result to others from the improper use of said water.
 4. All persons taking the water shall keep their own service pipes, meters, stopcocks, and apparatus in good repair and protected from frost, at their own risk and expense, and shall prevent all unnecessary waste of water. No claim shall be made against the City by reason of the breaking or freezing of any service pipe or meter or service cock; or if for any cause the supply of water should fail, or for damage arising from shutting off the water to repair mains, making connections or extensions or for any other purpose that may be deemed necessary; and the City may cut off the supply of water at any time, any permit granted or regulation to the contrary notwithstanding.
 5. In cases where only one tap is used to supply two or more distinct premises, or tenements, the person or persons controlling the same shall be liable for and pay the water rent for all the parties who are thus supplied.
 6. When the water has been turned off by the City Maintenance Department from any consumer, he shall not turn it on nor permit it to be turned on, without the consent of the City Maintenance Department.
 7. Every person, company, or corporation taking water supplied through the water system of the City, shall permit the City Maintenance Department at all hours of the day, between 7:00 a.m. and 6:00 p.m. to enter the premises or building of such consumer to examine the pipes and fixtures, take meter readings, and ascertain in what manner the water is used.
 8. Copper pipe shall be used for all service pipes from water main to curb stop. Beyond curb stop either copper or PVC pipe may be used at the option of the applicant. All copper and PVC pipe must be able to sustain a pressure of at least two hundred pounds to the square inch. Curb stops and service boxes used in all new connections must be such as approved by City Maintenance Department.
 9. Every service pipe must be laid sufficiently waving to allow not less than one foot extra length, and in such manner as to prevent rupture by settling.
 10. No person except the tappers having special permit from the City and duly authorized by the City Maintenance Department will be permitted to tap the distribution pipe or insert stopcocks or ferules therein; and the kind and size of the connections there made shall be that specified in the order of permit.
 11. Pipes must be tapped on top only and at no place at or within six inches of the hub.
 12. All service pipes must be laid a minimum of five feet below ground level, and in all cases to be protected as to prevent rupture by freezing.
 13. Every service pipe must be provided with a stop and waste cock for each

- consumer, easily accessible, and so situated that the water can be conveniently shut off and drained from the pipes.
14. Unless otherwise permitted, stop cocks shall be placed in the service pipe on the edge of the sidewalk near the curb line and be protected by an iron pipe reaching from the top to the service pipe of suitable size to permit of a stop key for turning on or off the stop, also with metal cover thereon, visible and even with the pavement or ground.
 15. All stop cocks shall be so installed that the stop key can be inserted clear to the service pipe without friction or inconvenience and no person except the tappers and the City Maintenance Department shall turn the water off or on by means of any such stop cock, or have in his or her possession any stop key of any kind for that purpose.
 16. In making excavations in streets or highways for the laying of pipes or making repairs the paving, stones, or earth removed shall be deposited in a manner that shall secure the least inconvenience to the public, and provision shall be made for the passage of water along the gutters.
 17. No person shall leave any excavation made in any street or highway open at any time without barricades, and during the night, warning lights must be maintained at such excavations.
 18. After service pipes are laid, in refilling the opening, the earth shall be laid in layers of not more than nine inches in depth, and each layer compacted to prevent settling. This work together with the replacing of the sidewalks, ballast, paving, and gutters shall be done so as to make the street as good as before it was disturbed, and to the satisfaction of the City. No opening shall be made in the streets for the tapping of water mains without the prior consent of the City Maintenance Department.
 19. No person except the City Maintenance Department, or a member of the regularly organized fire department, when in the performance of his duty as such firefighter, shall ever open or in any manner tamper or interfere with any fire hydrant, gate, valve, stop cock, fountain, or other fixture or part of the water system in the City of Comfrey.
 20. No person shall exercise or engage in the business or calling of plumbing, or perform any work whatever in connection with the waterworks system, without first obtaining a license under state law.
 21. Within forty-eight (48) hours after completing any attachment of connection the plumber or pipe fitter shall make full return to the City Maintenance Department, with a description of the apparatus and arrangements for using water in every case, and any other particulars that may be required by the City Maintenance Department. The water shall not be turned on to any premises until complete returns are made by the plumber.
 22. That all persons owning or occupying any building within the city limits of the City of Comfrey, which is located within 200 feet of a city water main, shall be required to connect to the city water system as their sole source of potable water.

SUBSECTION 3:

Any person who shall do or perform any act or thing prohibited by this Section or who shall

violate any of the rules or regulations hereof shall be guilty of a misdemeanor.

SUBSECTION 4:

If the owner or person controlling the premise should fail to pay water fees, the water shall be turned off. Where two or more consumers take water from the same service pipe and any of them neglect to pay water rights, the water shall be turned off from all. Whenever water shall be turned off as provided in this section, or elsewhere in this Section, it shall not be turned on again until all unpaid fees and damage should be fully paid together with the further sum of \$50.00, for turning off and on the water. Further, where digging is required to turn off and on the water, the person or entity hereby charged shall also pay the cost of such digging and any additional expenses associated therewith. All persons taking the water who shall desire to discontinue the use of the same, shall give written notice to the City Clerk at least ten (10) days prior to the time it is to be discontinued, otherwise they shall be liable for water fees on the minimum rate basis unless the meter shows that water in excess thereof has been used, until such time as proper notice be given as herein provided. No abatement of water fees shall be made by reason of removal from premises, disuse, or diminished use of water, unless notice is given the City Clerk of such disuse, accompanied with a fee of \$50.00 for turning off and on the water, plus the cost of such digging and any additional expenses associated therewith. No person, having knowledge that a fire exists, shall draw water from the mains for any purpose during such fire, except for the extinguishment of the fire.

SUBSECTION 5:

The City of Comfrey shall not be liable under any circumstances for any deficiency or failure in the supply of water to consumers whether occasioned by shutting water off for the purpose of repairs or for connections, or for any other cause whatever. In case of fire or alarm of fire or in making repairs, or constructing new works, the City council or its agent may shut off the water at any time and keep it shut off as long as deemed necessary.

SUBSECTION 6:

Every person, company, or corporation, using water from the city water system, must install at their own expense, a water meter approved by the City council, and pay for the use of water at the rates established from time to time by resolution of the City Council. From and after the effective date of this Section, a customer deposit of \$150.00 shall be required before commencement of service of water. Upon termination of service with all bills paid, the deposit shall be returned within forty-five (45) days, less any deductions, along with a written receipt specifying the conditions, if any, the deposit has been diminished upon return. Interest shall be paid on the deposit at the rate of six percent (6%) per year to be paid annually, by direct payment, or as a credit on bills.

8.03 Sanitary Sewer.

SUBSECTION 1: Definitions

“Domestic Sewage or Waste” shall mean all sewage or waste from water closets, lavatories, sinks, bath tubs, showers, household laundries, floor drains, bars, soda fountains, cuspidors, refrigerator drips, and drinking fountains, and other similar apparatus used in residences.

“Commercial and Industrial Sewage and Waste” shall mean all liquid or other sewage or waste resulting from any commercial, manufacturing, or industrial operations or processes.

SUBSECTION 2:

The City of Comfrey has constructed and has put into operation an efficient system designed for the proper treatment and disposal of domestic, commercial, and industrial sewage and waste; and for the purpose of providing funds with which to pay the cost of operating and maintaining said Sanitary Sewer System and Sanitary Disposal Plant and other items of cost and expense properly payable out of the service or rental charges hereinafter provided for, including cost of replacements, repairs, and upkeep, it is necessary to, and said City of Comfrey does hereby levy and assess sewage service and rental charge upon each lot, parcel of land, building, and premises having now or at any time hereafter a connection with the said Sanitary Sewer System and Disposal Plant operated by said City and, through such connection or by any other means or method, discharges any domestic, commercial, or industrial sewage or waste, water, or both liquids directly or indirectly into the Sanitary Sewer System and/or said Sanitary Disposal Plant of said City; and such sewage service or rental charge shall be determined by resolution of the City Council.

- a. The City reserves and shall have power to make further rules and regulations and by resolution establishes any other classifications, and to determine the rates and charges to be paid by any new domestic, commercial, or industrial use or user; and it shall have power to increase or decrease from time to time all rates and charges herein fixed or hereafter established by subsequent resolutions.
- b. Said rental or service charge shall be due and payable monthly on the date established by the City Council. It shall be the duty of the City Clerk to mail statements of such rentals to the owner, lessee, or occupant of each such lot, parcel, premises or building prior to the due dates thereof. If such rentals are not paid within ten (10) days from the due date thereof, ten percent (10%) of such rental shall be imposed and shall be added thereto as a penalty and collected with such rental charge. The City shall have power to require that connections with said sewage system and the use thereof by any delinquents be discontinued.

SUBSECTION 3:

Money received for such rental and service charges shall be used for any of the purposes hereinbefore recited as reasons for levying and assessing the same.

SUBSECTION 4:

All rental and service charges levied by and pursuant to this Section, including amendments thereto, and resolutions adopted under authority hereby reserved by the City, and which have been billed to the occupant of any premises served, and not paid, may be recovered in a civil action by the City in any court of competent jurisdiction.

SUBSECTION 5:

Any person who shall willfully and by any fraud, trickery, or artifice himself use, or cause others to obtain the use of said Sanitary Sewage Treatment and disposal Plant, and cause or permit sewage, waste, waters, or liquids to enter said system secretly and by concealment with the intent and purpose of avoiding or evading payment of the charges herein established, shall be guilty of a misdemeanor.

SUBSECTION 6:

No roof or surface water drains shall be connected to the sanitary sewer system of the City.

SUBSECTION 7:

No other surface water shall be caused or permitted to drain directly or indirectly into the sanitary sewer system of the City.

SUBSECTION 8:

Within 30 days, any person, firm, or corporation having a roof or surface drain now connected with the sanitary sewer system shall disconnect the same. The opening in the sewer shall be closed in an effective, workmanlike manner.

SUBSECTION 9:

Within 90 days any person, firm, or corporation who to knowledge has such other condition upon or about his property so as to permit other surface water to enter into the sanitary sewer system shall remedy the condition in an effective, workmanlike manner.

8.04 Service Line Connections.

SUBSECTION 1: The owner of any building or property being served by the City of Comfrey water system shall be solely responsible for maintaining the water service line from the point of connection to the water main located in the city street or other public way into the building or property being served. If such owner fails to repair any leak or other defect in such service line within 24 hours after notice by the City of the need for such repair, the City may disconnect such service, and the costs of disconnecting such service shall be the obligation of such owner. In addition, service to such building or property shall not be restored until such owner or his successor shall pay to the City such reasonable reconnection charge as established by the City Council. In the event such leak or other defect causes a substantial waste of water or damage is likely to result from the leak or defect, the City may turn the water off immediately upon the giving of notice if repair is not commenced immediately, in which event such owner shall be liable for the costs of disconnecting such service as well as subject to the reconnection charge. The City may also at its option in either such event in lieu of disconnecting such service, undertake to effectuate the necessary repairs, and the costs thereof shall be the liability of such owner.

SUBSECTION 2: The owner of any building or property being served by the sewer system for the City of Comfrey shall bear all costs and expenses incident to the maintenance and repair of any portion of the sewer service line connecting such building or property to the main sewer line of the City of Comfrey which is located within such owner's curb line. If he fails to make any such repair to such sewer service line within 24 hours after notice by the City of the need for such repair, the City may disconnect such service, and the costs of disconnecting such service shall be the obligation of such owner. In addition, service shall not be restored until such owner or his successor shall pay to the City such reasonable reconnection charge as established by the City Council.

SUBSECTION 3: The owner of any building or property who desires to permanently terminate

water or sewer service to such building or property shall, in the case of water service, cause such service to be disconnected at the shut off valve of the water service line, in such manner that the water service line is capped prior to the point of the shut off value, and in the case of sewer service, cause such service to be disconnected by capping the sewer service line at the curb line or other appropriate point on the owners property designated by the sewer and water commissioner of the City. All costs of terminating water or sewer service according to these provisions shall be the liability of such owner. In the event the owner fails to comply with these provisions in terminating such service, the City may, by giving 24 hours' notice, cause the termination of service to be made in compliance with this ordinance, and such owner shall be liable to the City for the costs thereof.

SUBSECTION 4: Any repairs made necessary to any city street or public way by reason of any owner, pursuant to this ordinance, repairing any water line or sewer line or terminating any water or sewer service, shall be made according to the specifications of the City, and the costs thereof shall be the liability of such owner. In the event such owner fails to make such repairs to any city street or public way, the City may effectuate such repairs and charge the cost thereof to such owner.

SUBSECTION 5: In the event the City incurs any costs in performing any work on behalf of a property owner pursuant to the provisions of this ordinance, the City Clerk shall serve written notice of an assessment upon the owner or his representative for such costs. Said notice shall direct the owner or his representative to pay the assessment to the City Clerk within 10 days after the service of the notice. If the assessment is not paid within 10 days, the Clerk shall certify the amount to the County Auditor for collection with the real estate taxes on the parcel affected in the succeeding year in the same manner as other special assessments.

CHAPTER 9

STREETS, SIDEWALKS, CURBS AND GUTTERS

9.01 Construction.

SUBSECTION 1:

Prior to the construction or reconstruction of any street within the City of Comfrey, Minnesota, which involves the improvement of the surface of such street by bituminous paving, it shall be required that proper curb and gutter as specified under the applicable City Code Sections shall previously have been installed on and along both sides of the street to be improved by bituminous paving, or that such curb and gutter will be installed on and along both sides of the street to be improved with bituminous paving as part of such street reconstruction project.

SUBSECTION 2:

The cost of the installation of such curb and gutter where none exists or the reconstruction of such curb and gutter where the existing curb and gutter is sub-standard, shall be paid by the adjoining land owner in accordance with the City Code of the City of Comfrey, except that such land owner shall not be required to pay any engineering costs associated with the construction or reconstruction of such curb and gutter when installed as part of such street project.

9.02 Maintenance.

SUBSECTION 1:

No person, firm, or corporation shall dig or make any excavation in any street or alley within the corporate limits of the City of Comfrey, Brown County, Minnesota, without having first obtained permission from the City Maintenance Department.

SUBSECTION 2:

Any person making any such excavation shall indemnify and save harmless the City of Comfrey, Minnesota, from all liability for any accident or damage arising from any negligence or unskillfulness in doing or protecting his work, or for damage to the property of another, and shall restore the streets, alleys, sidewalks, pavements and gutters in as good state and condition as he found them, replacing the earth in layers of not more than nine inches in depth, compacting each layer to prevent settling, and filling the last two feet of the said excavation with gravel and bituminous surface as previously existed.

SUBSECTION 3:

Any person who shall injure or tear up any pavement, side or crossing walk, drain or sewer, or any part thereof or shall dig any hole, ditch, or drain in any street, pavement or sidewalk, without written permission from the City Maintenance Department, or shall hinder or obstruct the making or repairing of any pavement, sidewalk, or crosswalk which is or may be in the process of construction under any law or resolution of the City Council, or shall hinder or obstruct any person employed by the City Council in making any public improvements or work ordered by the City Council, shall be guilty of a misdemeanor.

SUBSECTION 4:

All persons shall by ten o'clock every morning remove all snow, ice, and dirt from the sidewalk in front of the premises occupied by them. **[Under the nuisance Chapter, owners are given 24 hours to remove snow, etc., and 12 hours for those on the main street.]**

9.03 Size and Location.

SUBSECTION 1:

The width of the sidewalks in all streets within the city limits shall be a minimum of five feet in width, and all shade trees planted in the boulevard shall be located so as not to interfere with the sidewalks. No ornamental trees shall be allowed in the boulevard.

SUBSECTION 2:

All sidewalks on streets for which a system of grades has been or shall be established, shall be laid as follows: The curbstone or outer edge of the sidewalk shall be seven inches higher than the center of the street adjacent thereto, and all such sidewalks shall have a rise of four inches from the curbstone or outer edge of the sidewalk to the line of the street. All sidewalks in the street on which no system of grading has been established, shall be laid as near as practicable to the present or natural surface of the street.

SUBSECTION 3:

Whenever any sidewalks have been built which are required to be built by any of the provisions of the Comfrey City Code, or whenever any sidewalk is out of repair or does not conform to the grade established by this Section or fails in any manner to conform to the requirements of any Section of the Comfrey City Code, it shall be the duty of the owners or occupants of the lot or lots adjacent thereto, to build or repair the same in accordance with the requirement of the City Code, or to obtain permission from the City Council to remove such sidewalk.

SUBSECTION 4:

All sidewalks on Brown Street, between Broad Street and Field Street, shall be ten feet wide; all of said sidewalks shall slope not less than two inches toward the center of said Brown Street.

SUBSECTION 5:

All of said sidewalks on Brown Street between Broad Street and Field Street shall be constructed of stone, cement, or tile, to be laid in accordance with such plans and specifications as may be adopted by the City Council.

SUBSECTION 6:

All curbing shall conform in all respects and be laid in accordance with such plans and the specifications as may be adopted by the City Council.

9.04 **Awnings, Marquees, and Canopies.** All awnings, marquees, and canopies constructed as an attachment to a building and which project into a street right-of-way shall comply with the following:

1. Movable awnings of cloth supported on metal frames may project into streets when lowered for use. No such awnings shall be projected into any street more than six feet and the lowest part of the metal frame shall be at least seven feet above level of the sidewalks and no part of the awning shall be less than six feet, six inches above the sidewalk.
2. No marquee or fixed awning shall hereafter be so erected as to project over the street line, until permission shall have first been secured by the City Council.
3. Every marquee or fixed awning shall have its framework constructed of metal, and shall be so designed as to safely sustain a load of at least fifty pounds per superficial foot of its upper surface. Whenever glass is used as the roof of a marquee or fixed awning, it shall be wire glass and not less than three-eighths (3/8ths) of an inch in thickness.
4. No marquee or fixed awning shall project to within less than 24 inches of the outer line of the curb of the street. In case the roadway of any street is widened hereafter, all existing marquees or fixed awnings extending or projecting over such street adjacent to such widened roadway shall be at once either removed or brought into conformity with the above requirement of this subdivision for marquees or fixed awnings hereafter erected.
5. No marquee or fixed awning shall be, at any point, at a less height than eight (8) feet above the sidewalk. Each marquee or fixed awning shall be provided with proper gutters and rain water leaders to conduct water from the roof.
6. No marquee or fixed awning may be supported at its outer side or front by columns or posts that are located within the street, including the portion of the street where the curb or sidewalk is located.
7. A marquee or fixed awning may be supported by properly designed and properly anchored cantilever beams, extended into the building or by chains or steel rods properly fastened to its outer side or front and extending from thence, at an angle of at least forty (40) degrees with the horizontal plane, to the wall of the building, and securely anchored to said wall and to the floor or roof construction or the columns of such building. Where any marquee or fixed awning is supported by chains or steel rods, as above provided, the diameter of the metal of the links composing such chains, and of such rods, shall not be less than seven-eighths

(7/8ths) of an inch. Supporting chains or rods shall not be less than two (2) in number and more shall be provided when required by the City Council.

8. Written permission for the construction of a marquee or canopy shall first be obtained from the City Council upon the owner thereof executing an agreement indemnifying the City against all loss, cost, damages, or expense incurred, or sustained by, or recovered against the City by reason of the construction or maintenance of such fixed awning or awnings. Before such permission is granted, the location and construction of the awning or awnings must be approved in writing by the Planning Commission and the same must not be erected or constructed except in accordance with such written approval. Such owner shall also file with the City certificates or policies of public liability arising out of the construction and maintenance of such awning or awnings in an amount to be fixed by the City Council but not less than \$5,000.00 for liability to one person and \$10,000.00 for liability arising out of one accident, which policies shall be kept continuously in force.

9.05 Vacation of Streets and Alleys.

SUBSECTION 1:

That the alley located in Block Eight (8), Original Plat, City of Comfrey, Brown County, Minnesota, be and the same hereby is vacated.

SUBSECTION 2:

That Field Street between Block Eight (8) and Block Nine (9), Original Plat, City of Comfrey, Brown County, Minnesota, be and the same hereby is vacated.

SUBSECTION 3:

That portion of Railroad Street adjoining Lot One (1), Block (1), Original Plat, City of Comfrey, Brown County, Minnesota, described as follows: Beginning at the intersection of the west line of Broad Street with the southwest line of Railroad Street, thence north along the west line of Broad Street four (4) feet, thence west parallel to the south line of said Lot One (1) to the point of intersection with the northeast line of said Lot One (1), thence southeasterly along the northeast line of said Lot One (1), to the point of beginning, City of Comfrey, Brown County, Minnesota, be and the same is hereby vacated.

SUBSECTION 4:

That the following alleys located within the city limits of the City of Comfrey, Brown County, Minnesota, are hereby vacated:

- a. The north-south alley in Block One (1) from the southwest line of Railroad Street

south to the north line of the east-west alley of said Block One (1), Original Plat, City of Comfrey, Brown County, Minnesota.

- b. The north-south alley in Block Five (5) from the north line of Ochre Street north to the south line of the east-west alley of said Block Five (5), Original Plat, City of Comfrey, Brown County, Minnesota.

SUBSECTION 5:

That the following alley located within the city limits of the City of Comfrey, Brown County, Minnesota, is hereby vacated:

The East One-half (E½) of the east-west alley between Blocks Fifteen (15) and Twenty-four (24), City of Comfrey, Brown County, Minnesota.

SUBSECTION 6:

That the following street located within the city limits of the City of Comfrey, Brown County, Minnesota, which no longer serves a public purpose, is vacated:

A portion of Pine Street lying northwesterly of a line which is the northeasterly extension of the southeasterly line of Lot Nine (9) of Warehouse Lots of the former Chicago and Northwestern Railway Company, City of Comfrey, Brown County, Minnesota.

CHAPTER 10 TRAFFIC REGULATION

10.01 General.

SUBSECTION 1:

Minnesota Statutes incorporated by reference. The regulatory provisions of Minnesota statutes, Chapter 168, Chapter 169, and Chapter 171, as amended, are adopted as Section 10.01, regulating the use of highways, streets, and alleys within the City of Comfrey, and are hereby incorporated in and made a part of this Section 10.01 as completely as if set out here in full.

SUBSECTION 2:

“U” turns. No vehicle shall be turned between intersections so as to proceed in the opposite direction or to park on the opposite side of the street from which it was traveling.

SUBSECTION 3:

Penalty. Any violation of the statutes adopted by reference in Subsection 1 is a violation of this Section of the City Code when it occurs within the City of Comfrey. Any person violating any provision of this Section 10.01 shall be guilty of such an offense and shall be punished by such penalty as is prescribed by the statutes of the State of Minnesota for petty misdemeanors and misdemeanors.

10.02 Unreasonable Acceleration.

SUBSECTION ONE: DEFINITIONS

Rapid acceleration of a vehicle accomplished in such a manner as to cause squealing or screeching sounds by the tires, and/or fishtailing of the motor vehicle, or the throwing of sand or gravel by the tires of said vehicle, or erratic or irregular changing speeds so as to create a hazard for the driver or other persons or property, or any combination of the above.

SUBSECTION TWO: PROHIBITION

No person shall start or accelerate any motor vehicle with an unreasonable exhibition of speed on any public or private way within the City limits. Prima facie evidence of such unnecessary exhibition of speed shall be unreasonable squealing or screeching sounds made by the tires and the throwing of sand or gravel by the tires of said vehicle or both.

SUBSECTION THREE: PENALTY

Any person found guilty of violating this Section 10.02 shall be punished by a fine not to exceed \$100.00.

10.03 Parking and Storage.

SUBSECTION ONE.

It shall be unlawful for anyone to park, store or keep any vehicle, recreational equipment, or other device or structure as enumerated herein, in violation of the terms of this Section 10.03.

- A. Definitions. For purposes of this Section the following words have the meanings specified below.
1. “Vehicle” or “vehicles” means a motor vehicle or trailer as defined in Minn. Stat. § 169.011, including pioneer, classic collector and street rod vehicles, but excluding small trailers that are clearly designed to be used for general yard and garden purposes and not for travel on the roadways.
 2. “Recreational devices” means and includes the following:
Boats, boat trailers, and any other water-craft, snowmobiles; and all-terrain vehicles as defined in Minn. Stat. § 84.92, subd. 8.
 2. “Front yard area” means all that area between the front property line and a line drawn along the front face or faces of the principal structure on the property and extended to the side property lines. The front side of the property will be determined as specified in the zoning Chapter.
 3. “Outside” means to be outside of an enclosed storage facility and visible from any other property.
 5. “Occasional Guest” means a person who does not reside on the property on a regular basis, or a person who resides on the property no more than any part of four months during a year.
- B. Declaration of nuisance. The outside parking and storage on residentially-zoned property of vehicles, recreational devices, materials, supplies or equipment not customarily used for residential purposes in violation of the requirements set forth below is declared to be a public nuisance because it (a) obstructs views on streets and private property, (b) creates cluttered and otherwise unsightly areas, (c) prevents the full use of residential streets for residential parking, (d) introduces commercial advertising signs into areas where commercial advertising signs are otherwise prohibited, (e) decreases adjoining landowners and occupants’ enjoyment of their property and neighborhood, and (f) otherwise adversely affects property values and neighborhood patterns.
- C. Unlawful parking and storage.
1. A person must not place, store, or allow the placement or storage of ice fish houses, skateboard ramps, playhouses or other non-permanent structures outside for more than a total of 24 hours within any 30 day period in the front-yard area of residentially-zoned property unless more than 100 feet back from the front property line.
 - a. A person must not place, store, or allow the placement or storage of pipe, lumber, forms, steel, machinery, or similar materials, including all materials used in connection with a business, outside on residentially-

zoned property, unless shielded from public view by an opaque cover or fence.

- b. A person must not cause, undertake, permit or allow the outside parking and storage of vehicles or recreational devices on residentially-zoned property unless it complies with the following requirements:
 - i. No more than a total of four vehicles and recreational devices per lawful dwelling unit may be parked or stored anywhere outside on R-1 and R-2 zoned property. This maximum number does not include vehicles of occasional guests who do not reside on the property.
 - ii. Vehicles or recreational devices that are parked or stored outside in the front-yard area must be on a paved or graveled parking or driveway area.
 - iii. Vehicles, recreational devices and other articles stored outside on residential property must be owned by a person who resides on that property. Students who are away at school for periods of time but still claim the property as their legal residence will be considered residents on the property.
 - iv. Vehicles stored outside on residential property must bear current license plates.
 - v. Vehicles stored outside on residential property may not be stored on the property more than any part of 20 days in any month if they are inoperable.
- c. A person owning, driving or in charge of a vehicle with a weight classification of G through T inclusive, as specified in Minn. Stat. § 168.013, Subd. 1e, must not cause or permit that vehicle to be parked outside or to stand continuously for more than two hours on any property or public street within a residential zone in the city.

D. Exceptions. The prohibitions of this section do not apply to the following:

- 1. A motor truck, pickup truck or similar vehicle being used by a public utility, moving company, or similar company, that is actually being used to service a residence not belonging to or occupied by the operator of the vehicle;
- 2. A vehicle that is actually making a pickup or delivery at the location where it is parked. Parking for any period of time beyond the period of time reasonably necessary to make the pickup or delivery and in excess of the two hour limit is unlawful; and
- 3. Lawful nonconforming and permitted uses.

- E. Abatement. A police officer or other authorized person may order a vehicle constituting a public nuisance under subparagraphs C and D, above, to be immediately removed and/or impounded. The impounded vehicle will be surrendered to the owner by the towing contractor only upon payment of the required impound, towing and storage fees.
- F. Penalty. Violation of any of the terms or prohibitions of this Section shall be a misdemeanor.

SUBSECTION TWO.

- A. No vehicle shall be parked on any street in the city limits of Comfrey for a continuous period longer than 24 hours, or when signs or markings otherwise prohibit or restrict parking, nor in violation of posted signs, snow removal operations, street or sidewalk repair, or the like, underway or to be taken.
- B. During periods of snow removal, every owner or custodian of a vehicle, if the owner be not present, shall remove the vehicle from its parking place at the request of lawful authority or persons engaged in snow removal. Further, while snow removal is being undertaken on Brown Street within the city limits, no motor vehicle may park on the north side of said Brown Street, from the commencement of snow removal operations until all such operations have been completed.
- C. When any police officer finds a vehicle unattended upon any street, and such vehicle is parked contrary to the provisions of this Section, and interferes with snow removal operations, street sweeping, or repairs or the like, said police officer is hereby authorized to provide the removal of said vehicle and the expenses incurred therein shall be the responsibility of the owner or the persons in control of said vehicle.
- D. No vehicle or recreational device as defined in Subsection One of this Section 10.03 shall be stopped, parked, or left standing upon any street for more than any part of three (3) days during any calendar month.

SUBSECTION THREE. Penalty.

Any violation of this Section 10.03 shall be a petty misdemeanor, as defined by the laws of the State of Minnesota. In addition to other penalties provided for the violation of this Section 10.03, if the owner or person in charge, parks, stores or keeps a vehicle or recreational device in violation of the provisions of this Section, it may be removed and stored by the city at the owner's expense.

10.04 Snowmobile Operation.

DEFINITIONS:

For the purpose of this Section 10.04, the definitions set forth in Minnesota Statutes 84.87 are hereby applicable and are hereby incorporated in this Section 10.04 by reference thereto.

OPERATION:

It shall be unlawful for any person to operate a snowmobile under the following circumstances:

- a) On private property of another without the express permission to do so by the owner or occupant of the property.
- b) On any public owned lands, including but not limited to public school grounds, park property, playgrounds, recreational areas without express provision or permission to do so by the proper public authority.
- c) In a manner so as to create loud, unnecessary or unusual noise so as to disturb or interfere with the peace and quiet of other persons.
- d) Without having such snowmobiles registered as provided for in Section 84.82, Minnesota Statutes, which is hereby adopted, except that this provision shall not apply to the operation of a snowmobile on the private property of the owner, by said owner or a member of his immediate family, or to duly authorized police officers, or other officers, employees, or agents of any political subdivisions of the State of Minnesota, while in the performance of their duties.
- e) Within the vicinity of any church, while church services are being conducted therein on a Sunday. On any street in the City of Comfrey where angle parking of motor vehicles is permitted or ordered by the City Council.
- f) On Brown County 36, on Brown County 16, on Brown County 17, Field Street between Ochre and Brown, Court Street between Ochre and Brown, the alley between Court Street and Field Street, in Block 5, Original Plat, and Ochre Street between Field Street and Court Street.

DRIVING RULES:

Subdivision (1), Section 84.87, Minnesota Statutes and all provisions thereof, is adopted by reference and made a part hereof as fully and completely as though set out herein and in full.

- 1) No snowmobile shall be used to carry more persons at one time than the number for which it was designed and all such persons shall sit astride the seat, facing forward, with one leg on either side of the snowmobile.
- 2) No snowmobile, while operating in the city limits of the City of Comfrey, shall tow any sled, ski, or similar conveyance, unless there is a solid tow bar or connection.
- 3) There shall be a maximum speed limit on the streets and alleys within the City of Comfrey of 15 miles per hour.
- 4) Snowmobile, while on public streets or alleys, shall travel in single file on the extreme right hand side of the highway.

EQUIPMENT:

All snowmobiles operated within the City of Comfrey shall have the following equipment:

- a) Mufflers which are properly attached and which reduce the noise of operation of the vehicle to the minimum noise necessary for operating the vehicle, and no person shall use a muffler cut-out, by pass, or similar devise on said vehicle.
- b) Adequate brakes as required by Minnesota Statutes Chapter 169.97 and at least one headlight and one taillight.
- c) A safety or so-called “dead man” throttle in operating condition; a safety or “dead man” throttle is defined as a devise which, when pressure is removed from the accelerator or throttle, causes the motor to be disengaged from the running track.

UNATTENDED VEHICLE:

It is unlawful for the owner or operator to leave or allow a snowmobile to be or remain unattended on public property while the motor is running or with the keys to start same in the ignition switch.

PENALTY:

Any person violating the terms of this Section 10.04 shall be guilty of a misdemeanor.

10.05 Motorized Golf Carts, ATVs, Mini-Trucks, and UTVs.

Subsection 1. Permit. No person shall operate a motorized golf cart, class 1 all-terrain vehicle, utility terrain vehicle or mini-truck on streets or alleys, without obtaining a permit as provided herein.

- (1) Every application for a permit shall be made on a form approved by the city council.
- (2) The annual permit fee shall be determined and fixed by resolution of the city council.
- (3) All permits shall be issued on a permanent basis, subject to revocation under Subsections 8 and 9 hereunder, provided that ownership of the ATV (Class 1), mini-truck or UTV has not been transferred since the permit was obtained. The transfer of ownership of an ATV (Class 1), mini-truck or UTV that was previously permitted shall cause the permit to expire, and the new owner shall be responsible for obtaining a valid permit.
- (4) Only persons at least sixteen (16) years of age and holding a driver’s license recognized by the State of Minnesota as permitting the operation of motor vehicles in the state are eligible for permits. A permit issued under this section shall only be valid during the time and under the circumstances that the holder’s driver’s license would allow operation of a motor vehicle in the State of Minnesota

- (5) Every applicant must provide proof of insurance complying with the requirements of Minnesota Statutes Section 65B.48, Subdivision 5, as the same may be amended from time to time.
- (6) No permit is required for motorized golf carts, class 1 ATVs, UTVs or mini-trucks when used in a community parade or event.

Subsection 2. Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (1) "All-terrain vehicle" or "ATV" means a motorized flotation-tired vehicle of not less than three low pressure tires, but not more than six tires, that is limited in engine displacement of less than 1,000 cubic centimeters and includes a class 1 all-terrain vehicle and class 2 all-terrain vehicle.
 - a. "Class 1 all-terrain vehicle" means an all-terrain vehicle that has a total dry weight of less than 1,000 pounds.
 - b. "Class 2 all-terrain vehicle" means an all-terrain vehicle that has a total dry weight of 1,000 to 1,800 pounds.
- (2) "Motorized golf cart" means any passenger conveyance being driven with four wheels with four low-pressure tires that is limited in engine displacement of less than 800 cubic centimeters and total dry weight less than 800 pounds.
- (3) "Mini-truck" as defined in Minn. Stat. § 169.011, subd. 40(a), a motor vehicle that has four wheels; is propelled by an electric motor with a rated power of 7,500 watts or less or an internal combustion engine with a piston displacement capacity of 660 cubic centimeters or less; has a total dry weight of 900 to 2,200 pounds; contains an enclosed cabin and a seat for the vehicle operator; commonly resembles a pickup truck or van, including a cargo area or bed located at the rear of the vehicle; and was not originally manufactured to meet federal motor vehicle safety standards required of motor vehicles in the Code of Federal Regulations, title 49 sections 571.101 to 571.404, and successor requirements.
- (4) "Utility Terrain Vehicles" or "UTVs" Also referred to as side-by-sides, a purpose built 4x4 load-carrying working vehicle for off-road work in natural terrain environments. Hereafter referred to as UTVs. Examples of UTVs include Polaris Rangers, Honda Big Reds, Cub Cadet Volunteers, Bristers Trail Wagons, and other similar vehicles.
- (5) "Designated Roadways" All City streets and alleys, within the portion of the City right-of-way improved for vehicle traffic, and such portion of the right away on County roads as approved by Brown/Cottonwood

County, shall be designated All-Terrain Vehicle (ATV) routes for use by ATVs, mini-trucks, and UTVs. No United States or State of Minnesota road shall be a designated roadway for ATVs, mini-trucks or UTVs.

Subsection 3. Conditions.

- (1) Motorized golf carts shall display the slow-moving vehicle emblem provided for in Minn. Stat. §169.045, as it may be amended from time to time, when operated on designated roadways.
- (2) Motorized golf carts, ATVs and UTVs may only be operated on designated roadways from sunrise to sunset. They shall not be operated in inclement weather conditions or at any time when there is insufficient light to clearly see persons and vehicles on the roadway at a distance of 500 feet.
- (3) Motorized golf carts, ATVs, UTVs and mini-trucks are permitted to operate only on city streets, not state or federal highways, except to cross at intersections. They are not allowed to be used on city sidewalks except for snow removal.
- (4) Motorized golf carts, ATVs, UTVs and mini-trucks shall be equipped with a rear-view mirror to provide the driver with adequate vision from behind as required by Minn. Stat. § 169.70.
- (5) In addition to the provision of said State Statutes, no person shall drive or operate an motorized golf cart, ATV, UTV or mini-truck in the City of Comfrey:
 - a. At a speed in excess of 15 miles per hour upon designated routes in the City.
 - b. Upon the private property of another without the express written consent of such other person.
 - c. In a manner so as to create a loud, unnecessary, or unusual noise which disturbs, annoys, or interferes with the peace and quiet of other persons.
 - d. In a careless, reckless or negligent manner to endanger the person or property of another or cause injury or damage thereon.
 - e. With an alcohol level of 0.08 percent or greater, or under the influence of a controlled substance.
 - f. With no more passengers than there are seats on the ATV, mini-truck or UTV to carry them. All passengers shall sit on the seats provided, with no infants or young children riding on laps.
 - g. While towing a sled, toboggan, wagon, trailer, or other object unless such sled, toboggan, wagon, trailer or other object is attached to the ATV, UTV or mini-truck by a solid hitch.
- (6) Every person operating a motorized golf cart, ATV, UTV or a mini-truck

under permit on city streets has all the rights and duties applicable to the driver of any other vehicle under the provisions of Minn. Stat., ch. 169, as it may be amended from time to time, except when these provisions cannot reasonably be applied to motorized golf carts or mini-trucks and except as otherwise specifically provided in Minn. Stat. § 169.045(7), as it may be amended from time to time.

Subsection 4. City Employee Use. Authorized city staff may operate a motorized golf carts, all-terrain vehicles and mini-trucks without obtaining a permit within the city on city streets, sidewalks, trails, rights-of-way, and public property when conducting city business.

Subsection 5. Mini-truck equipment requirements. A mini-truck may be operated under permit on designated roadways if it is equipped with all of the following:

- a. At least two headlamps.
- b. At least two tail lamps.
- c. Front and rear turn-signal lamps.
- d. An exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror.
- e. A windshield.
- f. A seat belt for the driver and front passenger.
- g. A parking brake.

Subsection 6. Insurance. Owners and operators of ATVs, mini-trucks and UTVs shall carry liability insurance coverage pursuant to Minnesota Statutes 65B.48, Subdivision 5, and carry evidence of such coverage on the permitted vehicle.

Subsection 7. Limitation of Liability. Nothing in this Section shall be construed as an assumption of liability by the City for any injuries to persons or property which may result from the operation of a motorized golf cart, ATV, UTV or mini-truck by a permit holder, the grant of such permit, or the failure by the City to revoke said permit.

Subsection 8. Revocation or Denial of Permit A permit may be revoked at any time or denied if it is shown that the permitted person cannot or will not safely operate a motorized golf cart, ATV, UTV or mini-truck on the designated routes or if the permitted person has had a valid driver's license revoked for traffic violations.

Authorized Law Enforcement Officers or the City Council may temporarily revoke the permit for violations of this Section until such time as the City Council makes final determination regarding revocation.

Subsection 9. Violation and Penalties. Any person violating any provision of this Section shall be guilty of a petty misdemeanor and is subject to having his or her permit under this section revoked.

10.06 **Prohibited Operation of Trucks.** The operation of trucks is hereby prohibited on Ash Street from its intersection with County Road 17 to its intersection with Ochre Street.

CHAPTER 11

ZONING

11.01 General Zoning Regulations.

SUBSECTION 1: Definitions: For the purpose of this Chapter 11, the terms defined in this section have the following meanings:

- 1.01 Accessory use or structure: A use or structure on the same lot with, and incidental and subordinate to, the principal use or structure.

- 1.02 Board: The Board of Appeals established in Subsection 10 of this Section.

- 1.03 Dwelling, one-family: A building used exclusively for occupancy by one family.

- 1.04 Dwelling, two-family: A building used exclusively for occupancy by two families living independently of each other.

- 1.05 Dwelling, multiple: A building or portion thereof used for occupancy by three or more families living independently of each other.

- 1.06 Family: A family shall include no more than one person of legal age plus their spouse (or a person residing with them as a spouse) plus the children of either of them plus the parents of either of them.

- 1.07 Front, lot: On an interior lot, that part of the lot which abuts on a street. On a corner lot, that part of the lot which abuts on a street for the shortest distance.

- 1.08 Height of building: The vertical distance from the average elevation of the finished grade at the front of the building to the highest point of the roof.

- 1.09 Home occupation: A lawful occupation customarily carried on by a resident of a dwelling as an accessory use within the same dwelling.

- 1.10 Lot: A single parcel of land which, at the time of application for a permit for a building on the land, is designated by its owner or developer as a parcel to be used, developed or built upon as a unit under single ownership or control. A lot may or may not coincide with the lot of record.

- 1.11 Lot, corner: A lot situated at the intersection of two or more streets, or bounded on two or more adjacent sides by street lines.

- 1.12 Lot, interior: A lot other than a corner lot.

- 1.13 Portable Storage Container: “Portable Storage Container” means a portable, weather-resistant, commercially leased or rented receptacle designed and used for the storage or shipment of personal property, building materials, or merchandise. The term shall not include yard waste containers, construction debris containers, or containers having a storage capacity of less than two hundred (200) cubic feet.
- 1.14 Structure: Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.
- 1.15 Structural alteration: Any change in the supporting members of a building, such as bearing walls, columns, beams, or girders.
- 1.16 Yard: An open space which is unoccupied and unobstructed from the ground upward, except as otherwise provided in this Section.
- 1.17 Yard, front: A yard extending across the front of the lot between the side lot lines and lying between the front street line of the lot and the nearest line of the principal building.
- 1.18 Yard, rear: A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal building.
- 1.19 Yard, side: A yard between the side line of the lot and the nearest line of the building and extending from the front yard to the rear yard.

SUBSECTION 2: Zoning Districts and District Regulations. For the purpose of this Section, the City of Comfrey is divided into the following use districts:

- 2.01 Commercial District: The following described property within the city limits of the City of Comfrey shall be designated commercial areas:
 - A. Lots One (1) and Two (2), Block One (1), Renner's Addition;
 - B. Lot Two (2), Block Twenty-four (24), Original Plat;
 - C. Lot One (1), Block Four (4), Original Plat;
 - D. all of Block Five (5), Original Plat;
 - E. all of Block Six (6), Original Plat;
 - F. all of Block Seven (7), Original Plat;
 - G. all of Block Two (2), Original Plat;
 - H. all of Block One (1), Original plat;

- I. Lot One (1) Block Seventeen (17), Original Plat;
- J. Lots Eleven (11) and Twelve (12), Block Twenty-one (21), Original plat;
- K. all of Block Twenty (20), Original Plat;
- L. Lots One through nineteen (1-19) inclusive, running in a northwest and southeasterly direction along the railroad right-of-way and Pine Street;
- M. Lot A, B, C, and D of Block Nineteen (19), Original Plat;
- N. the northeasterly portion of Holm's Addition described as follows:
the northeasterly portion of Holm's Addition described as bounded by a line on the West by Eastern Avenue, on the South by the easterly extension of George Street, on the east and north by the present easterly and northerly boundaries of Holm's Addition; and an area north of Block Three (3), Holm's Addition and east of Trunk Highway 258, described as: bounded as the west by Trunk Highway 258, on the north by the northerly corporate limits, on the south by the northern boundary of Block Three (3), Holm's Addition and on the east by the northerly extension of the westerly edge of Dewey Avenue; from the present location of Dewey Avenue north in a direct line to the northerly corporate limits;
- O. Southeast Quarter (SE1/4) of block Seventeen (17), Original Plat, City of Comfrey, Brown County, Minnesota.
- P. That tract of land between Railroad Street and the main track of the Dakota, Minnesota, and Eastern Railroad being 100 feet in width and running from the Southeast (SE) corner of Block Eight (8), Original Plat, South easterly to C.S.A.H. Number Seventeen (17);
- Q. That tract commencing at the northeast corner of Section Three (3), Township One Hundred Seven (107), Range Thirty-four (34), Cottonwood County, Minnesota, thence south along the east line of said section a distance of 706 feet, thence west and parallel with the north line of said section a distance of 636 feet, thence north and parallel with the east line of Block Two (2) of Liberty Park Addition to the Village of Comfrey, Minnesota, a distance of 400 feet, as a starting point and place of beginning; thence east and parallel with the north line of said section a distance of 204 feet; thence north and parallel with the east line of Steinmetz's Addition to said Village of Comfrey a distance of 273 feet; thence west and parallel with the north line of said section a distance of approximately 135.75 feet; thence south and parallel with the east line of said Steinmetz's Addition, a distance of 150 feet; thence west and parallel

with the north line of said section a distance of 68.25 feet; thence south and parallel with the east line of said Steinmetz's Addition a distance of 123 feet to the point of beginning.

- R. That tract commencing at the northeast corner of the Northeast Quarter (NE1/4) of Section Three (3), Township One Hundred Seven (107) North of Range Thirty-four (34) West of the Fifth Principal Meridian in Cottonwood County, Minnesota; thence south along the east line of said Northeast Quarter (NE1/4), 33 feet; thence west parallel with the north line of said Northeast Quarter (NE1/4) 667.75 feet, this being the point of beginning; thence running due south 150 feet; thence running due east 100 feet; thence running due north 150 feet; thence running due west 100 feet to the point of beginning, less and except the south 50 feet thereof.
- S. The area bounded on the east by Pine Street on the west by Railroad Street, on the south by Brown Street, and on the north by the south line of Lot Three (3), Block Two (2), Railroad Addition, City of Comfrey, Brown County, Minnesota.
- T. Lot Ten (10), Block Twenty-one (21), City of Comfrey, Brown County, Minnesota.

- 2.02 Residential District: All areas of the City of Comfrey not classified as commercial districts above shall be classified as residential districts until amended or changed in the manner prescribed in this Section.
- 2.03 The boundaries of the use districts as specified above shall be delineated on the official zoning map, which shall be on permanent file and available for public inspection in the City Clerk's office. It shall be the responsibility of the City Clerk to maintain and keep the map up-to-date and to record each amendment thereto within thirty (30) days after official publication of the ordinance adopting the amendment.
- 2.04 Annexed Land: Any land hereinafter annexed to the city shall be classified as being in the residential district unless otherwise classified in the annexation proceeding.

SUBSECTION 3: General Prohibitions in all Districts.

- 3.01 General Rule. No structure or land shall hereafter be used or occupied, and no structure shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with the regulations specified in this Section for the district in which it is located.
- 3.02 Other general limitations. No structure shall be erected or altered:

- A. To exceed the height or bulk;
 - B. To accommodate or house a greater number of families;
 - C. To occupy a greater percentage of lot area;
 - D. To have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein specified for the district in which the building is located. No structure shall be erected or altered in any other manner contrary to the provisions of this Section.
- 3.03 Open space. No part of a yard, or other open space, required for a building shall be included as part of a yard, or open space, similarly required for another building.

SUBSECTION 4: Regulations in Commercial Districts.

- 4.01 Subject to the limitation set forth in this section and in other provisions of this Section, buildings, structures and land may be used, erected and altered for any legal use in all commercial districts.
- 4.02 No use of buildings, structures and lands in a commercial district shall be made which is dangerous by reason of fire or explosion, or injurious, noxious or detrimental to surrounding properties by reason of the emission of dust, odor, fumes, smoke, waste, refuse matter, noise, or vibration, or which is in violation of any other Section of the City Code of the City of Comfrey or the laws of the State of Minnesota.
- 4.03 There shall be no minimum lot frontage, lot area, front yard depth, side yard width, rear yard setback or restriction on fences, except with respect to use of land in a commercial district for a one-family dwelling or a two-family dwelling. Any use of land in a commercial district for a one-family dwelling or two-family dwelling shall be subject to the same regulations as would be applicable for such use in a residential district.

SUBSECTION 5: Regulations in a Residential District.

- 5.01 Subject to the other provisions of this Section, buildings, structures and land may be used, erected and altered in a residential district for the following purposes:
- A. One-family dwelling and two-family dwelling.
 - B. Churches, parish house, school, public library, and museums.
 - C. Municipal parks, playgrounds and recreational buildings.

- D. Membership clubs, lodges, social, recreational and community center buildings and grounds for games and sports, except those having as a principal purpose any activity carried on as a business.
- E. Buildings used exclusively for governmental purposes, either city, county, state or federal.
- F. The renting of rooms or the furnishing of room and board in a dwelling primarily used as a one-family dwelling.
- G. Customary home occupations, such as dress making and millinery, and beauty shops, when situated in the same building used as a one-family dwelling, when the same are operated by persons residing therein.
- H. Private garages not exceeding 1800 square feet in floor area as an accessory use to any of the foregoing. In computing such maximum of 1800 square feet, storage sheds of 160 square feet or less shall be disregarded.
- I. Any use accessory to any of the foregoing.
- J. Funeral parlors or mortuaries when approved by the Zoning Committee following a public hearing before the Zoning Committee.
- K. Portable storage containers pursuant to a Special Use Permit issued as provided in Section 5.02, paragraph K.

5.02 In a residential district, the following minimum protective provisions are required:

- A. Front yard width shall be a minimum of fifty feet (50') in any area platted prior to October 1, 1979, and a minimum of sixty feet (60') in any area platted after October 1, 1979.
- B. Lot area shall be a minimum of 7,000 square feet in any area platted prior to October 1, 1979, and a minimum of 8,400 square feet in any area platted after October 1, 1979.
- C. Front yard depth shall be a minimum of twenty-five feet (25') from the front property line. No part of any boulevard or sidewalk area located within a platted street shall be considered as part of the front yard. Provided, that the minimum front yard depth may be less than twenty-five feet (25'), but not less than ten feet (10'), on any lot where the average of the front yard depth of the buildings on the lots adjacent thereto on either side is less than twenty five feet (25'), in which case the required front yard depth shall be equal to such average. In determining such average, a vacant lot or a lot occupied by a building set back more than twenty-five

feet (25') shall be considered as having a front yard depth of twenty five feet (25').

- D. Side yard width shall be a minimum of five feet (5') on each side if the lot is of a width of fifty feet (50') or less, and shall be a minimum of seven feet (7') on each side if the lot is over fifty feet (50') in width.
- E. The height of any building shall not exceed three stories or thirty-five feet (35') in height.
- F. Any garage built in a residential area shall be so constructed that the side walls do not exceed twelve feet (12') in height when measured from floor level of such garage, unless a variance is granted by the Board upon a showing of a reasonable necessity.
- G. Rear yard depth shall be a minimum of two feet (2') from the rear lot line. No public or private alley designated as such in the public records shall be considered as part of any lot, and in the case of a lot where the rear yard abuts on a public or private alley, the rear yard depth shall be a minimum of two feet (2') from the boundary line between such rear yard and such public or private alley.
- H. Fences, including any bracing or support materials, shall be setback a minimum of two feet (2') from all property lines, except as provided in paragraph I., below. Fences shall also comply with all other terms of this Section, and shall be subject also to the following restrictions:
 - 1. No fence shall be erected so that any part thereof exceeds a height of six feet (6') when measured from ground level.
 - 2. All fences shall be constructed only out of wood or masonry material, unless the fence being erected is a manufactured fencing material designed for use in residential areas.
 - 3. No fence shall be erected without the landowner first securing a building permit as required for other structures.
- I. Upon the written consent of adjoining landowners, fences may be located on the common boundary line of such adjoining landowners, subject to compliance with all other front yard and rear yard restrictions.
- J. Dwellings must be attached to a permanent foundation and must be of an overall width of at least 20 feet and of an overall length of at least 20 feet.

- K. Portable storage containers may be allowed by a special use permit only if located in the rear yard in an area not clearly visible from the street or adjacent dwellings and which conforms to the standards of Section 11.02.

SUBSECTION 6: Supplementary Regulations.

- 6.01 Home Occupations. A home occupation may be conducted only in accordance with the following requirements:
 - A. Subordinate use. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its residential use.
 - B. Outside appearance. Conduct of the home occupation shall result in no change in the outside appearance of the building or land, or other visible evidence of the conduct of the home occupation other than one sign, not exceeding six square foot in area, non-illuminated, and mounted flat against the wall of the dwelling.
- 6.02 Accessory uses. The following accessory uses, in addition to those otherwise specified in this Section, shall be permitted in any residential district, if the accessory uses do not alter the character of the premises in respect to their use for the purposes permitted in the district.
 - A. The operation of necessary facilities and equipment in connection with schools, hospitals and other institutions permitted in the district.
 - B. Recreation, refreshment and service buildings in public parks and playgrounds.
- 6.03 Signs. Signs in addition to those otherwise permitted in this Section shall be permitted in the following cases and under the following conditions:
 - A. Signs not exceeding five square feet in area displaying only the name of the property or premises upon which displayed or the name of the owner or lessee.
 - B. Signs not exceeding eight square feet in area pertaining only to the sale, rental or lease of the premises upon which displayed.
 - C. A bulletin board not exceeding 48 square feet in connection with any church, school or other public structure.
- 6.04 Computing front yards. For the purpose of computing front yard dimensions, measurements shall be taken from the nearest point of the front wall of the building to the street line, subject to the following qualifications:

- A. Cornices, canopies, or eaves may extend into the required front yard a distance not exceeding two feet, six inches.
 - B. A landing place or uncovered porch may extend into the required front yard to a distance not exceeding six feet, if the landing place or porch has its floor no higher than the entrance floor of the building. An open railing no higher than three feet may be placed around such place.
 - C. A wall, fence or hedge may occupy part of the required yard; but no wall, fence or hedge along the sides or front edge of any front yard shall be more than three and one-half (3 1/2) feet in height.
 - D. A ramp of not more than five feet in width and designed solely for handicapped accessibility purposes may occupy part of the required front yard, if the floor of such ramp is no higher than the first floor entrance floor of the building. An open railing no higher than three feet may be placed on either side of such ramp.
- 6.05 Attached accessory buildings. In case an accessory building is attached to the main building, it shall be made structurally a part of the main building and shall comply in all respects with the requirements of this Section applicable to the main building. An accessory building, unless attached to and made a part of the main building, shall not be closer than five feet to the main building, except as otherwise provided in this section.
- 6.06 Detached accessory buildings. Detached accessory buildings shall not be within five feet of the side line of the front half of any adjacent lot except as specified otherwise in this Section as being permitted.
- 6.07 Structures to have access. Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, and fire protection.
- 6.08 Major recreational equipment. No boat, boat trailer, fish house, travel trailer, pick-up camper or coach designed to be mounted on a motor vehicle, motorized dwelling, tent trailer, or similar major recreational equipment, and no case or box used for transporting such equipment shall be parked or stored for more than seven consecutive days on any lot in a residential district except in a car port or enclosed building or in a side or rear yard. No such equipment shall be used for living, sleeping, or housekeeping purposes for more than seven consecutive days when parked or stored on a residential lot, or in any location not approved for such use.
- 6.09 Parking and storage of certain vehicles. No motor vehicles or trailer without current license plates shall be parked or stored on any property in a residential

district other than in a completely enclosed building.

SUBSECTION 7: Performance Standards. Every use permitted by this Section shall be so established and maintained as to comply with the following:

- 7.01 Odor. No use shall cause the discharge of toxic, noxious, or odorous matter beyond the limits of the site where it is located in such concentrations as to be obnoxious or otherwise detrimental to the public health, safety, comfort, or welfare or cause injury to property or business.
- 7.02 Fumes or gases. Fumes or gases shall not be emitted at any point in concentrations that are noxious, toxic, or corrosive.
- 7.03 Fire hazards. Any activity involving the use or storage of flammable or explosive materials shall be protected by adequate fire-fighting and fire prevention equipment and by such safety devices as are normally used in the handling of such materials. Such hazards shall be kept removed from adjacent activities to a distance which is compatible with the potential danger involved.
- 7.04 Wastes. All solid waste material, debris or refuse shall be kept within a completely enclosed building or properly contained in a closed container designed for such purposes.
- 7.05 Air pollution. Every activity shall conform to state regulations relating to air quality standards and air pollution control.
- 7.06 Erosion. No activity shall be carried on in such a way that water, soil or any objectionable substance is carried on to any adjacent property.

SUBSECTION 8: Nonconforming Uses and Structures.

- 8.01 Dwelling on small lot. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of this Section or amendment despite the fact that the lot fails to meet the requirements for area or width in the district; but yard dimensions and other requirements for the lot shall conform to regulations for the district. This exemption from area and width requirements applies only to a lot without continuous street frontage with other lots in the same ownership.
- 8.02 Lots in same ownership. If two lots or combinations of lots and portions of lots with continuous street frontage in single ownership are of record on the effective date of this Section, and if all or part of the lots do not meet the width and area requirements of this Section for lots in the district, the land involved shall be considered to be an undivided parcel for the purpose of this Section, and no portion of such parcel shall be used or occupied which does not meet lot width

and area requirements of this Section, nor shall the parcel be so divided that any remaining lot does not comply with such requirements.

- 8.03 Nonconforming use of land. Any nonconforming use of land may be continued, subject to the following provisions:
- A. No such nonconforming use shall be enlarged or increased, or extended to occupy a greater area than was occupied when the use became nonconforming.
 - B. No such nonconforming use shall be moved in whole or in part to any other lot.
 - C. If any nonconforming use ceases for more than 30 days, any subsequent use of the land shall conform to the regulations of this Section for the district in which the land is located.
 - D. When a nonconforming use is superseded by a conforming use, the nonconforming use shall not thereafter be resumed.
- 8.04 Substantial destruction. If the nonconforming structure or nonconforming portion of the structure is destroyed (to an extent of more than 50 percent of its replacement cost exclusive of the foundation), any reconstruction shall conform to the provisions of this Section.
- 8.05 Moving structure. If the nonconforming structure is moved to another lot, it shall thereafter conform to the regulations for the district to which it is moved.
- 8.06 Continuance permitted. A nonconforming use of a structure, or of structure and land in combination, may be continued so long as it remains otherwise lawful, subject to the following provisions:
- A. Structural change. No existing structure devoted to a nonconforming use shall be enlarged, extended, reconstructed, moved, or structurally altered except in changing the use of the structure to a conforming use.
 - B. Extension of nonconforming use. A nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use when the use became nonconforming, but no such use shall be extended to occupy any land outside the building.
 - C. Change to other nonconforming use. If no structural alterations are made, any nonconforming use of a structure, or a structure and land, may be changed on permit from the board to another nonconforming use (allowable in the same or a more restricted district). The board shall authorize such change only if it finds that the proposed use is at least as

appropriate to the district as the existing nonconforming use. In permitting such change, the board may impose conditions and safeguards consistent with the purpose and intent of this Section.

- D. Resumption of nonconforming use. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall hereafter conform to the regulations for the district, and the nonconforming use shall not thereafter be resumed.
 - E. Discontinuance. When a nonconforming use of a structure, or structure and land in combination ceases for six consecutive months or for 18 months during any three-year period (except when government action impeded access to the premises), the structure or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district. This subdivision does not apply to structures occupied by seasonal uses.
- 8.07 Destruction of nonconforming structure. When a nonconforming use of a structure and land in combination exists, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this provisions means damage to an extent of more than 50 percent of the replacement cost at time of construction.
- 8.08 Uses under special use permit. When a use is granted a special use permit in a district in which such a use is authorized under permit, the use is deemed a conforming use.
- 8.09 Nonconformities created by amendment. When a nonconformity in a structure or the use of land or a structure is created by an amendment to this Section, the rights granted by this Section to the continuance of nonconformities apply to nonconformities existing on the date of the amendment.

SUBSECTION 9: Administration and Enforcement.

- 9.01 Administration Officer. The Zoning Committee shall serve as the zoning administrator and shall be responsible for enforcing this Section. In carrying out this general authority, they shall:
- A. Administer the requirements of this Section for building permits and issue or deny each application in accordance with the provisions of this Section.
 - B. Conduct inspections of buildings and the use of land to determine compliance with the terms of this Section. In the process of issuing a building permit, such inspection shall include an inspection of the premises after the landowner has staked out the location of the proposed structure and prior to issuance of the permit, and at least one inspection

during construction and prior to completion.

- C. Maintain permanent and current records pertaining to this Section, including but not limited to, maps, amendments, special uses, variances, appeals, and applications therefor.
 - D. Receive, file and forward applications for appeals, variances, special use permits, or other action to the appropriate official bodies.
 - E. Report to the City Attorney all violations of this Section for the purpose of initiating appropriate actions or proceedings for enforcement of this Section. Proceedings to enforce this Section may also be initiated by the City Council without prior action of the Zoning Committee.
 - F. Hear and make recommendations to the City Council on requests for variances, special use permits, amendments, and on any other matters relating to the administration of this Section.
- 9.02 The City Council shall appoint a Zoning Committee of three (3) members who shall serve for staggered three year terms. The Zoning Committee members shall receive such compensation as determined by resolution of the City Council.
- 9.03 The Zoning Committee shall establish at least one regular monthly meeting date, at which time it shall consider and act on any applications received since the last meeting. The Zoning Committee may also hold special meetings upon 2 days' notice, at the discretion of the chairman; but no such special meeting shall be called upon request of any applicant unless such applicant shall have paid such additional fee as determined by resolution of the City council.
- 9.04 Building Permits. No structure shall be erected, added to, structurally altered, or moved until a permit therefore has been issued by the Zoning Committee, which permit must be conspicuously displayed on the premises prior to commencing any work. Except upon written order of the Board of Appeals, no building permit shall be issued for any structure where the construction, addition, moving, or use thereof would be in violation of this Section. Application for a building permit shall be made to the Zoning Committee on a form furnished by the city. With every application for a building permit, there shall be submitted a copy of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, and such information as may be necessary to determine compliance with this Section. In addition, no permit shall be issued until the applicant has staked out the location of the proposed structure. The fee for a building permit shall be established by resolution of the City Council. The Zoning Committee shall issue the building permit only if it determines that the building plans and the application comply with the terms of this Section. Notwithstanding the foregoing, no building permit shall be required for a storage

shed of 160 square feet or less that complies with all other requirements of this ordinance.

- 9.05 Any building permit issued hereunder shall expire and be void one year after the date on which it is issued unless prior to such time construction is actually commenced. Upon application of the property owner prior to expiration of the building permit, or any extension thereof, such building permit may be extended for an additional one year, providing no changes in the proposed improvement are requested. Provided, no extension of a building permit shall be granted for a time period which is more than three (3) years from the effective date of the original building permit.
- 9.06 Any applicant who is granted a building permit and who fails to perform the actual construction, alteration or addition in conformity with the plan as represented in the application is in violation of this Section.
- A. In such cases where the actual construction, alteration or addition, while not in conformity with the application, fully complies with all other provisions of this Section, the applicant may purge such violation by making a new application for a permit showing the as constructed layout of the structure, which new application must be filed within 10 days of the giving of notice by the Zoning Committee of such violation, together with payment of an application fee.
- B. In all other cases, the Zoning Committee shall report such violation to the City Attorney for the purpose of enforcing the provisions of this Section.

SUBSECTION 10: Board of Appeals and Adjustments.

- 10.01 Board created. There is hereby created a Board of Appeals and Adjustments consisting of the City Council. The term of each of the members of the Board of Appeals shall be coterminous with his term on the City Council.
- 10.02 Procedure. Three members of the board constitute a quorum and a majority of all the members is necessary for any decisions of the board. The Mayor shall serve as chairman and the City Clerk, who is not a member of the Board, shall serve as secretary. Subject to the provisions of this Section, the board may adopt rules necessary to the conduct of its affairs. The chairman or, in his absence the acting chairman, may administer oaths to witnesses. All meetings shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. The board shall keep records of its examinations and other official actions.
- 10.03 Powers and duties of board. The board shall have the power and duty of hearing and deciding appeals or requests in the following cases:

- A. Appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by the Zoning Committee in the enforcement of this Section.
- B. Requests for variances from the literal provisions of this Section in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and requests for special use permits as provided by this Section.

10.04 Appeal. An appeal for review of a decision of the Zoning Committee may be taken to the board by any person, firm or corporation. Such an appeal shall be taken by filing a notice of appeal specifying the grounds thereof with the board within 30 days after the decision. If the appeal is not taken by the owner of the property which is the subject matter of the decision appealed from, the notice shall not be so filed until after it has been served upon such owner either in person or by mail. Upon the filing of an appeal, the board shall set a date for hearing thereon, which shall be no later than 45 days from the date of filing. Notice of such hearing shall be mailed not less than 10 days before the date of the hearing to the applicant. At the hearing, the board shall hear such persons as desire to be heard with respect to the appeal, either in person or by agent or attorney. Within 15 days thereafter, the Board shall make a decision on the matter, and mail a written copy of the decision to the applicant.

The zoning committee shall transmit to the board prior to the hearing all papers constituting the record upon which the action appealed from was taken. An appeal for an administrative review stays all proceedings, including criminal proceedings, in furtherance of the action appealed from unless the zoning committee certifies to the board that by reason of facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In that case the proceedings shall not be stayed otherwise than by a restraining order granted by a court of competent jurisdiction.

10.05 Variances. No variances shall be granted to allow a use not permissible under the terms of this Section in the district involved. In granting a variance the board may prescribe appropriate conditions in conformity with this Section. When such conditions are made part of the terms under which the variance is granted, violation of the conditions is a violation of this Section. A variance shall not be granted by the board unless it conforms to the following standards:

- A. That the property owner proposes to use the property in a reasonable manner.
- B. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and do not result from the actions of the petitioner.

- C. The proposed variance will not alter the essential character of the locality. Factors to consider is whether the resulting structure will be consistent with the surrounding area; and will not impair an adequate supply of light and air to adjacent property, or in any other respect impair the public health, safety, or welfare of the residents of the city.
- D. If requested by the board, the property owner requesting a variance must have the property on which a variance is requested surveyed.

10.06 Decision by board. Upon filing with the board a request for variance, the board shall set a date for hearing thereon, which shall be no later than 45 days from the date of filing. Such hearing shall be held before the Zoning Committee at which time the Zoning Committee shall hear such persons as desire to be heard, either in person or by agent or attorney. Notice of any such hearing shall be mailed not less than 10 days before the date of hearing to the person who filed the variance request, and to each owner of property situated wholly or partly within 350 feet of the property to which the variance relates, insofar as the names and addresses of such owners can be determined by the clerk from records available to the public. Within 10 days after the hearing, the Zoning Committee shall make its recommendation on the matter to the Board of Appeals, and serve a copy of such recommendation upon the petitioner by mail. Failure of the Zoning Committee to file a recommendation within 10 days of the public hearing shall be deemed to be an approval of the application. Upon the filing of such recommendation or upon the expiration of such 10 days, the Board shall hold such public hearings upon the application as it deems advisable. After conclusion of any additional hearings, the Board may grant the application or any part thereof in such form as it deems advisable if approved by a two-thirds (2/3) vote of the members of the whole Board.

SUBSECTION 11: Special Use Permits.

11.01 Procedure. A special use permit may be issued in accordance with this section for any use or purpose for which such permits are required or permitted by this Section.

Application for a special use permit shall be made by the owner to the zoning Committee on a form prescribed by the committee and accompanied by such other information as required by rules of the committee. The zoning committee shall hold a hearing thereon within 45 days from the date of filing, in the same manner as specified in Subdivision 10.06, and make its recommendations on the proposal to the Board.

Upon receipt of such recommendations, the council shall hold whatever hearings it deems advisable and shall make its decision upon the proposal to grant a special use permit in the same manner as specified in Subdivision 10.06.

11.02 Standards. The Zoning Committee shall recommend a special use permit and the Board shall order the issuance of such permit only if it finds that such use at the proposed location:

- A. Will not be detrimental to or endanger the public health, safety, morals, comfort, convenience or general welfare of the neighborhood or the city.
- B. Will be harmonious with the general and applicable specific objectives of the comprehensive plan of the city and this Section.
- C. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area.
- D. Will not be hazardous or disturbing to existing or future neighboring uses.
- E. Will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems, and schools; or will be served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use.
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare, or odors.
- H. Will have vehicular approaches to the property which are so designed as not to create traffic congestion or an interference with traffic on surrounding public thoroughfares.
- I. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

11.03 Denial for noncompliance. If the Zoning Committee recommends denial of a special use permit or the Board orders such denial, it shall include in its recommendations or determinations findings as to the ways in which the proposed use does not comply with the standards required by this Section.

11.04 Conditions. In recommending or approving any special use permit, the Zoning Committee and the Board may impose conditions which it considers necessary to

meet the standards of this Section and to protect the best interests of the surrounding area or the city as a whole. Violation of any such condition is a violation of this Section. These conditions may include but are not limited to the following:

- A. Ingress and egress to property and proposed structures thereon with particular reference to vehicle and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other catastrophe.
- B. Off-street parking and loading areas where required, in consideration of the economic, noise, glare, or odor effects of the special use on nearby property.
- C. Refuse and service areas.
- D. Utilities, with reference to location, availability and compatibility.
- E. Diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
- F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
- G. Required yards and other open space.
- H. General compatibility with adjacent and other property in the district.

11.05 Expiration. If substantial construction has not taken place within six months after the date of the special use permit, the permit is void except that, on application, the council, after receiving the recommendation of the planning commission, may extend the permit for an additional period not to exceed 1 year. A special use permit authorizes only the conditional use specified in the permit and expires if, for any reason, the authorized use ceases for more than 1 year.

SUBSECTION 12: Amendment.

12.01 In general. This Section may be amended by following the procedure specified in this Subsection.

12.02 Initiation. An amendment may be initiated by the city council or the Zoning Committee, or by the petition of not less than 50 percent of the property owners affected by the proposed amendment and 50 percent of those property owners within 350 feet of the proposed change. An amendment not initiated by the Zoning Committee shall be referred to the committee for study and report, and the council shall not act on the amendment until it has received the recommendation

of the Zoning Committee or until 60 days have elapsed from the date of reference of the amendment without a report by the committee.

- 12.03 Action by Zoning Committee. Before any amendment is adopted, the Zoning Committee shall hold at least one public hearing thereon after a notice of the hearing has been published in the official newspaper at least ten days before the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates.

Following the hearing the Zoning Committee shall make a report of its findings and it shall file a copy with the city clerk within 10 days of the hearing. Failure of the Zoning Committee so to report on an amendment is deemed to be approval by the committee of the amendment.

- 12.04 Council action. Upon the filing of such report, or upon the failure of the zoning committee to file such a report within 10 days of the hearing, the city council shall hold such public hearings as it deems advisable. After the conclusion of the hearings, if any, the council may adopt the amendment or any part thereof in such form as it deems advisable. The amendment shall be effective only if two-thirds of all members of the council concur in its passage.

SUBSECTION 13: Petitions for Amendment and Adjustments.

- 13.01 Any person filing a petition or otherwise requesting the City Council or Zoning Committee to initiate proceedings to consider a variance, special use permit or an amendment of the zoning ordinance rezoning property or changing regulations within any use district shall pay a fee according to the schedule established by resolution of the City Council.
- 13.02 Such fee is payable at the time of filing a petition and is not refundable.
- 13.03 The petition shall give the street address of the land as to which the petition is made, contain a legal description thereof, state the mailing address of the owner, and clearly describe the structure to be built or altered if the petition is granted, or if the petition is for a change in any regulations of this Section, it shall state the change and the reasons therefore. The planning commission may require the petitioner to submit a certificate by a registered land surveyor verifying the front, rear and side-yard setbacks of all buildings and structures situated on or adjacent to the property described in the petition.

SUBSECTION 14: Penalty. Any person who violates any provision of this Section is guilty of a misdemeanor and upon conviction thereof the maximum penalty shall be such as is provided by Minnesota Statutes, and the minimum penalty shall be a fine of not less than \$500.00. Each day

that the violation is permitted to exist constitutes a separate offense.

11.02 Solar Energy.

Subsection 1: Purpose In order to accommodate the renewable energy needs of residents and businesses and enhance the sustainability of local energy production and consumption, while protecting the public health, safety and general welfare of the community, the city finds that these regulations are necessary in order to:

1. Allow property owners the opportunity to capture their on-site solar energy resource;
2. Allow small-scale solar distributed generation that can provide support to the local electric grid;
3. Enhance the economic use of local resources and foster the development of solar energy businesses in the city;
4. Minimize adverse visual effects of solar energy installations through careful design and siting standards; and
5. Encourage distributed generation that fully integrates into the municipal electric utility to protect the utility's distribution system, protection and control schemes, and maintain existing levels of safety and reliability to customers.

Subsection 2: Definitions For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

1. **Building Integrated Solar.** A solar energy system that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building-integrated systems include but are not limited to photovoltaic or hot water solar energy systems that are contained within roofing materials, windows, skylights, and awnings.
2. **Ground- or Pole-Mounted Solar Energy System.** A solar energy system mounted on a rack or pole that rests on the ground or on a foundation, and is not connected to a building except by the electric system.
3. **Roof- and Building-Mounted Solar Energy System.** A solar energy system mounted on top of the finished surface of a building roof or another component of the finished building surface.
4. **Solar Collector Surface.** The surface and framing of a solar collector, excluding the rack, rail, or other device upon which the collector is mounted.
5. **Solar Energy System.** A mechanical or electrical device whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

Subsection 3: Permitted Accessory Use Solar energy systems are allowed as an accessory use in all zoning classifications where structures of any sort are allowed, subject to certain requirements as set forth below.

1. **Height.** Solar energy systems must meet the following height requirements:
 - a. Building- or roof-mounted solar energy systems shall not exceed the maximum allowed height in any zoning district, except that for solar installations on flat

- roofs or roofs with minimal slope (under 10%) solar installations shall be exempt from height limitations. Regardless of height limitations, solar energy systems shall not extend more than three feet above the peak of a pitched roof, and shall not extend more than ten feet above the roof surface of flat roofs or roofs with minimal slope (under 10%).
- b. Ground- or pole-mounted solar energy systems shall not exceed 20 feet in height when oriented at maximum tilt.
2. **Set-back.** Solar energy systems are required to meet set-back standard for the district in which the systems are located, except as provided below:
 - a. Solar energy systems mounted on the primary building or garage are allowed to extend into a required side or rear yard. Measurements of encroachment are made from the edge of the collector or the collector support system, whichever extends nearest to the adjacent property line.
 - b. For roof-mounted solar energy systems the collector surface and mounting devices shall not extend beyond the exterior perimeter of the building's roof, except as such extensions are building-integrated systems, designed to serve as an awning or canopy. Exterior piping for solar hot water systems or electrical conduit or other electric component shall be allowed to extend beyond the perimeter of the building on a side or rear yard exposure.
 - c. Ground-mounted solar energy systems may be located within the rear or side yard areas, but in no case will they be less than five feet from any property line when oriented at minimum design tilt. Solar energy systems shall not be permitted in the required front yard or easement areas.
 - d. Clearance to electric lines. Electric lines passing over the collector must have a minimum clearance of ten feet, or most recent standard in the National Electric Safety Code.
 3. **Coverage.** Ground-mounted solar energy systems are subject to accessory use coverage limitations, except that solar energy installations shall not count toward the maximum number of accessory structures and are not required to have exterior finishes similar to the primary structure. Coverage shall be calculated as the square footage of ground under the system when at the solar energy system's minimum design tilt.
 4. **Visibility.** Building or roof-mounted solar energy systems shall be designed to blend into the architecture of the building, as viewed from the front public right-of-way. Solar energy systems that meet the following design standards shall be in compliance with the visibility requirements:
 - a. On pitched roofs located in residential districts, the solar collectors shall not extend above the peak of the roof.
 - b. On pitched roofs on a corner lot, roof-mounted systems shall be flush-mounted.
 - c. The solar collector shall not extend beyond the edge of the finished roof.
 - d. Solar energy systems not meeting the above design standards shall require a conditional use permit.
 5. Approved solar components. Electric solar energy system components must have a UL listing and solar hot water systems must have an SRCC rating.
 6. Compliance with state codes. All active solar energy systems shall meet approval of the relevant code officials, consistent with the most currently adopted State of

Minnesota Building Code, National Electric Code, National Electric Safety Code and Plumbing Code.

7. Ground – or Pole Mounted Solar Energy Systems shall not be permitted in districts zones residential.

Subsection 4: Restrictions on Solar Energy Systems Limited

1. Noise generated by the system shall not exceed 30 decibels, measured at the property line.
2. Operation of the system at the proposed location shall be consistent with reasonable enjoyment of adjacent property.
3. System shall be kept in good repair and sound condition. Upon abandonment of its use, the structure shall be immediately dismantled and removed from the property.
4. System will be so equipped that in the case of a loss of electricity by the city electrical system, the solar system will be shut down and no electricity will be put into the city electrical distribution lines.
5. If the system is used to heat the property of the owner of the system, the property shall be equipped with switching devices so that the city electricity may be switched off by an electronic signal during a period of high demand of electricity. The owner shall have an alternate source of heat for such periods.
6. No homeowners' agreement, covenant, common interest community standard, or other contract between multiple property owners shall prohibit property owners from installing solar energy systems for the capture of direct sunlight. Design review conducted by a common interest community as applied to proposed solar energy installations within the CIC may reasonably require mitigation of visual impacts but may not preclude solar development within the CIC.

11.03 **Floodplain Management.** Ordinance #163 and Ordinance #192 previously adopted by the City Council, regarding Floodplain Management, shall remain in full force and effect as fully as if set forth herein; a copy of which is included in the Appendix to this City Code.

CHAPTER 12

OFFENSES AND PENALTIES

12.01 Except as specifically provided in any ordinance or Section of the City Code of the City of Comfrey to the contrary, the violation by any person, firm, or corporation of any ordinance or any Section of the City Code of the City of Comfrey shall be punishable as a misdemeanor; the maximum penalty for which shall be as provided from time to time by Minnesota Statutes. This shall pertain only to criminal proceedings and shall not affect any civil remedies available to the City of Comfrey for the violation of a particular ordinance or Section of the City Code.

APPENDIX

Ordinance #132 and Ordinance #185 previously adopted by the City Council, granting a Cable Communications Franchise, shall remain in full force and effect as fully as if set forth herein; a copy of which is included in the Appendix to this City Code.

Ordinance #151 previously adopted by the City Council, regulating adult establishments, shall remain in full force and effect as fully as if set forth herein; a copy of which is included in the Appendix to this City Code.

Ordinance #163 and Ordinance #192 previously adopted by the City Council, regarding Floodplain Management, shall remain in full force and effect as fully as if set forth herein; a copy of which is included in the Appendix to this City Code.