

# **TITLE 9**

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## **Public Utilities**

- Chapter 1**      Water Utility Regulations and Rates
- Chapter 2**      Sewer Utility Regulations and Rates
- Chapter 3**      Electric Utility Regulations and Rates
- Chapter 4**      Cable Television
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# **Title 9 – Chapter 1**

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## **Water Utility Regulations and Rates**

**Please refer to the Public Service Commission  
Tariff for the City of Westby at the following link:**

**<https://apps.psc.wi.gov/RATES/tariffs/viewfile.aspx?type=water&id=6400>**

**A hard copy is also available at City Hall.**

# Title 9 – Chapter 2

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## Sewer Utility Regulations and Rates

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### Sec. 9-2-1 Definitions.

- (a) The following definitions shall be applicable:
- (1) **Approving Authority.** The Common Council, of the City of Westby, Vernon County, Wisconsin, or its duly authorized committee, agent, or representative.
  - (2) **Biochemical Oxygen Demand (BOD).** The quantity of oxygen utilized in the biochemical oxidation of organic matter in five (5) days at twenty (20) degrees Centigrade, expressed as milligrams per liter. Quantitative determination of BOD shall be made in accordance with procedures set forth in "Standard Methods".
  - (3) **Building Drain.** That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer.
  - (4) **Building Sewer.** The extension from the public sewer or other place of disposal beginning outside the inner face of the building wall.
  - (5) **Chlorine Requirement.** The extension from the building drain to the public sewer or other place of disposal beginning outside the inner face of the building wall.
  - (6) **Compatible Pollutants.** Biochemical oxygen demand, suspended solids, phosphorus, pH, or fecal coliform bacteria, plus additional pollutants identified in the WPDES permit for the publicly owned treatment works receiving the pollutants if such works were designed to treat such additional pollutants to a substantial degree.
  - (7) **Floatable Oil.** Oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.
  - (8) **Garbage.** The residue from the preparation, cooking, and dispensing of food, and from the handling, storage, and sale of food products and produce.
  - (9) **Ground Garbage.** The residue from the preparation, cooking, and dispensing of food that has been shredded to such degree that all particles will be carried freely in suspension under the flow conditions normally prevailing to public sewers with no particle greater than one-half (1/2) inch in any dimension.
  - (10) **Incompatible Pollutants.** Wastewater with pollutants that will adversely affect or disrupt the quality of wastewater treatment if discharged to a wastewater treatment facility.

- (11) **Industrial Waste.** The wastewater from industrial process, trade, or business, as distinct from sanitary sewage, including cooling water and the discharge from sewage pretreatment facilities.
- (12) **Natural Outlet.** Any outlet, including storm sewers and combined sewer overflows, into a water course, pond, ditch, lake, or other body of surface water or ground waters.
- (13) **Parts Per Million.** A weight-to-weight ratio; the parts per million value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.
- (14) **Person.** Any and all persons, including any individual, firm, company, municipal or private corporation, association, society, institution, enterprise, government agency, or other entity.
- (15) **pH.** The logarithm of the reciprocal of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams per liter of solution. Neutral water, for example, has a pH value of seven (7) and a hydrogen ion concentration of ten (10) exp [- seven (7)].
- (16) **Public Sewer.** Any sewer provided by or subject to the jurisdiction of the City of Westby. It shall also include sewers within or outside the corporate boundaries that serve one (1) or more persons and ultimately discharge into the City sanitary sewer system, even though those sewers may not have been constructed with City funds.
- (17) **Sanitary Sewage.** A combination of liquid and water-carried wastes discharged from toilets and/or sanitary plumbing facilities, together with such ground, surface, and storm waters as may be present.
- (18) **Sanitary Sewer.** A sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.
- (19) **Sewage.** The spent water of a community. The preferred term is "wastewater".
- (20) **Sewer Service Charge.** A service charge levied on users of the wastewater collection and treatment facilities for payment of use-related capital expenses as well as the operation and maintenance costs, including replacement of said facilities.
- (21) **"Shall"** is mandatory; **"May"** is permissible.
- (22) **Shock.** Any discharge of water or wastewater which is concentration of any given constitute or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration of flows during normal operation and adversely affects the system and/or performance of the wastewater treatment works.
- (23) **Standard Methods.** The examination and analytical procedures set forth in the most recent edition of "Standard Methods for the Examination of Water, Sewage, and Industrial Wastes" published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.
- (24) **Storm Drain (sometimes termed "storm sewer").** A drain or sewer for conveying water, ground water, subsurface water or unpolluted water from any source.
- (25) **Stormwater Runoff.** That portion of the rainfall that is drained into the sewers.
- (26) **Suspended Solids.** Solids that either float on the surface of, or are in suspension in, water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for Examination of Water and Wastewater" and is referred to as nonfilterable residue.
- (27) **Unpolluted Water.** Water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.
- (28) **Wastewater.** The spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings,

- industrial plants and institutions, together with any ground water, surface water, and stormwater that may be present.
- (29) **Wastewater Facilities.** The structures, equipment, and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.
  - (30) **Wastewater Treatment Works.** An arrangement of devices and structures for treating wastewater, industrial wastes, and sludge. Sometimes used as synonymous with waste treatment.
  - (31) **Watercourse.** A natural or artificial channel for the passage of water, either continuously or intermittently.
  - (32) **Wisconsin Pollutant Discharge Elimination System (WPDES) Permit.** A document issued by the Wisconsin State Department of Natural Resources which establishes effluent limitations and monitoring requirements for the municipal wastewater treatment facility.

### **Sec. 9-2-2 Management, Operation and Control.**

- (a) **Management.** The management, operation, and control of the sewer system for the City of Westby is vested in the Mayor and Common Council of said City; all records, minutes and all written proceedings thereof shall be kept by the Clerk-Treasurer of the City of Westby; the Utility Clerk of Westby shall keep all the financial records.
- (b) **Construction.** The sewer utility of the City of Westby shall have the power to construct sewer lines for public use, and shall have the power to lay sewer pipes in and through the alleys, streets, and public grounds of the City of Westby; and generally, to do all such work as may be found necessary or convenient in the management of the sewer system. The City of Westby shall have power by themselves, their officers, agents, and servants, to enter upon any land for the purpose of making examination or supervise in the performance of their duties under this Chapter, without liability therefore; and the Common Council shall have power to purchase and acquire for the City of Westby all real and personal property which may be necessary for construction of the sewer system, or for any repair, remodeling, or additions thereto.
- (c) **Maintenance of Services.** The Owner shall maintain sewer service from the street main to the house and including all controls between the same, without expense to the City, except when they are damaged as a result of negligence or carelessness on the part of the City. All sewer services must be maintained free of defective conditions, by and at the expense of the Owner or occupant of the property. When any sewer service is to be relaid and there are two (2) or more buildings on such service, each building shall be disconnected from such service and a new sewer service shall be installed for each building.
- (d) **Condemnation of Real Estate.** Whenever any real estate or any easement therein, or use thereof, shall in the judgment of the City of Westby, be necessary to the sewer system, and whenever, for any cause, an agreement for the purchase thereof, cannot be made with the Owner thereof, the City of Westby shall proceed with all necessary steps to take such real estate easement, or use by condemnation in accordance with the Wisconsin Statutes and the Uniform Relocation and Real Property Acquisition Policy Act of 1970, if Federal Funds are used.
- (e) **Title to Real Estate and Personality.** All property, real, personal, and mixed, acquired for the construction of the sewer system, and all plans, specifications, diagrams, papers, books and records connected therewith said sewer system, and all buildings, machinery, and fixtures pertaining thereto, shall be the property of said City of Westby.

## Sec. 9-2-3 User Rules and Regulations.

### (a) General.

- (1) The rules, regulations, and sewer rates of the City of Westby hereinafter set forth shall be considered a part of the contract with every person, company or corporation who is connected to the sewer system of the City of Westby and every such person, company or corporation by connecting with the sewer system shall be considered as expressing his/her or their assent to be bound thereby. Whenever any of said rules and regulations, or such others as the said City of Westby may hereafter adopted, are violated, the service shall be shut off from the building or place of such violation [even though two (2) or more parties are receiving service through the same connection] and shall not be re-established except by order of the City of Westby, and on payment of all arrears, the expenses and established charges of shutting off and putting on, and such other terms as the City of Westby may determine, and a satisfactory understanding with the party that no further cause for complaint shall arise. In case of such violation, the City of Westby, furthermore, may declare any payment made for the service by the party or parties committing such violation, to be forfeited, and the same shall thereupon be forfeited. The right is reserved to the City of Westby to change the said rules, regulations, and sewer rates from time to time as they may deem advisable; and to make special rates and contracts in all proper cases.
- (2) The following rules and regulations in this Section for the government of licensed plumbers, sewer users and others, are hereby adopted and established.

(b) **Plumbers.** No plumber, pipe fitter, or other person will be permitted to do any plumbing or pipe fitting work in connection with the sewer system without first receiving a license from the State of Wisconsin or obtaining permission from the City. All service connections to the sewer main shall comply with State plumbing code.

(c) **Users.** The following provisions shall be applicable to sewer utility users:

#### (1) ***Mandatory Connection.***

- a. The owner of each parcel of land adjacent to a sewer main, or within a reasonable service distance as determined by the Common Council, on which there exists a building usable for human habitation or in a block through which such system is extended, shall connect to such system within one hundred eighty (180) days of notice in writing from the City. Upon failure to so do the City may cause such connection to be made and bill the property owner for such costs. If such costs are not paid within thirty (30) days, such notice shall be assessed as a special tax lien against the property, however, that the owner may within thirty (30) days after the completion of the work file a written option with the City Clerk-Treasurer stating that he/she cannot pay such amount in one (1) sum and ask that there be levied in not to exceed ten (10) equal installments and that the amount shall be so collected with interest at the rate of nine percent (9%) per annum from the completion of the work, the unpaid balance being a special tax lien, all pursuant to Sec. 144.06, Wis. Stats.
- b. In lieu of the above, the City at its option may impose a penalty for the period that the violation continues, after ten (10) days written notice to any owner failing to make a connection to the sewer system of an amount equal to one hundred fifty percent (150%) of the minimum quarterly charge for sewer service payable monthly for the period in which the failure to connect continues, and upon failure to make such payment said charge shall be assessed as a special tax lien against the property, all pursuant to Sec. 144.06, Wis. Stats.

- c. This Chapter ordains that the failure to connect to the sewer system in contrary to the minimum health standards of said City and fails to assure preservation of public health, comfort, and safety of said City.
- (2) **Septic Tanks Prohibited.** The maintenance and use of septic tanks and other private sewage disposal systems within the area of the City of Westby serviced by its sewer system are hereby declared to be a public nuisance and a health hazard. From and after June 1, 1981, the use of septic tanks or any private sewage disposal system within the area of the City serviced by the sewerage system shall be prohibited.
- (3) **Application for Service.**
  - a. Every person connecting with the sewer system shall file an application in writing to the City of Westby in such form as is prescribed for that purpose. Blanks for such applications will be furnished at the office of the Utility Clerk of the City of Westby. The application must state fully and truly all the use which will be allowed except upon further application and permission regularly obtained from said City of Westby. If the applicant is not the owner of the premises, the written consent of the owner must accompany the application. Persons connected to the sewer system of the City of Westby are referred to herein as "Users".
  - b. The application may be for service to more than one (1) building, or more than one (1) unit of service through one (1) service connection; and, in such case, charges shall be made accordingly.
  - c. If it appears that the service applied for will not provide adequate service for the contemplated use, the City of Westby may reject the application. If the City of Westby shall approve the application, it shall issue a permit for services as shown on the application.
- (4) **Connection Charge.** Persons attaching to a main of the Municipal Sewer Utility shall have the lateral from the sewer main installed at his/her own expense.
- (5) **Tap Permits.** After sewer connections have been introduced into any building or upon any premises, no plumber shall make any alterations, extensions, or attachments, unless the party ordering such tapping or other work shall exhibit the proper permit for the same from the City of Westby.
- (6) **User to Keep in Repair.** All users shall keep their own service pipes in good repair. And protected from frost, at their own risk and expense, and shall prevent any unnecessary overburdening of the sewer system.
- (7) **User Use Only.** No user shall allow others or other services to connect to the sewer system through his/her lateral.
- (8) **Vacating of Premises and Discontinuance of Service.** Whenever premises served by the system are to be vacated, or whenever any person desires to discontinue service from the system; the City must be notified in writing. The owner of the premises shall be liable for any damages to the property of such damage which may be discovered having occurred to the property of the system other than through the fault of the system or its employees, representatives, or agents.
- (9) **User to Permit Inspection.** Every user shall permit the City or its duly authorized agent, at all reasonable hours of the day, to enter their premises or building to examine the pipes and fixtures, and the manner in which the drains, and sewer connections operate; and they must at all times, frankly and without concealment, answer all questions put to them relative to its use, all in accordance with this Chapter and Sec. 196.71, Wis. Stats.



(10) **Utility Responsibility.** It is expressly stipulated that no claim shall be made against said City of Westby or acting representative by reason of the breaking, clogging, stoppage, or freezing of any service pipes; nor from any damage arising from repairing mains, making connections or extensions or any other work that may be deemed necessary. The right is hereby reserved to cut off the service at any time for the purpose of repairs or any other necessary purpose, any permit granted or regulation to the contrary notwithstanding. Whenever it shall become necessary to shut off the sewer within any district of the said City of Westby, the City shall, if practicable, give notice to each and every consumer within said City, of the time when such service will be so shut off.

(d) **Excavations.**

- (1) In making excavations in streets or highways for laying service pipe or making repairs, the paving and the earth removed must be deposited in a manner that will occasion the least inconvenience to the public.
- (2) No person shall leave any such 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.
- (3) In refilling the opening, after the service pipes are laid, the earth must be laid in layers of not more than nine (9) inches in depth, and each layer thoroughly compacted to prevent settling. This work together with the replacing of sidewalks, ballast and paving, must be done so as to make the street as good, at least, as before it was disturbed, and satisfactory to the City of Westby. No opening of the streets for tapping the pipes will be permitted and when the ground is frozen.

(e) **Tapping the Mains.**

- (1) No person, except those having special permission from the City of Westby, or persons in their service and approved by them, will be permitted, under any circumstances to tap the mains or collection pipes. The kind and size of the connection with the pipe shall be that specified in the permits or order from said City of Westby to insure that new sewers and connections to the sewer system are properly designed and constructed.
- (2) Pipes should always be taped on the top, and not within six (6) inches [fifteen (15) cm] of the joint, or within twenty-four (24) inches [sixty (60) cm] of another lateral connection. All service connections to mains must comply with State plumbing code. Service connections to an existing sewer main shall be made by means of a saddled wye or specially adopted tee. Connections to existing tees or wyes shall be made with an approved bonded rubber adapter.

(f) **Installation of House Laterals.**

- (1) All service pipes (laterals) on private property will be installed in accordance with State of Wisconsin Administration Code Chapter H82 "Design, Construction, Installation, Supervision and Inspection of Plumbing", specifically, Section H82.04(4) "Building Sewers".
- (2) Per Section H82.04(5), Wis. Adm. Code, all laterals will be inspected: "The building sewer and/or private interceptor main sewer shall be inspected upon completion of placement of the pipe and before backfilling; and tested before or after backfilling".

(g) **Extensions.** The Westby Municipal Sewer Utility shall extend sewer mains to a new person(s) in accordance with the following charges and the following conditions-to-wit:

- (1) When an extension main is required by the prospective user, said person shall make an application for such an extension in writing to the Common Council of the City of Westby by filing a written application for the same with the City Clerk-Treasurer. After the filing of such an application, the Common Council shall first determine the logical location of

the next manhole or manholes. Next, the Council shall determine the length and location of the extension, taking into consideration the future prospective demands for service, the capacity of downstream facilities, and the orderly development of the particular area. No extension shall be made for a distance less than to the next manhole. All sewer extensions shall be constructed in compliance with local and state laws, ordinances and regulations.

- (2) The person who requests the extension shall pay the entire cost of said extension including the manhole or manholes that are part of the extension. If more than one (1) user is involved, the entire cost shall be divided among these users.
- (3) After making the decision as to the length and location of the extension and prior to the time of making the charge to the person(s), the Common Council shall determine the benefits to be received by any parcel that can be served by said extension. Before making a determination as to benefits received, said Common Council shall first divide the area to be served into logical building lots. Such Common Council may consider the recommendations of the landowner in determining said building lots if the landowner as a part of his/her application accompanies said application with a proposed division of said land into lots for sale or use. In determining the amount to be paid by the original users if more than one (1) user is involved, the division of the charge shall be made by considering each building lot owned by one (1) of the original applicants as a separate user.
- (4) Payments are to be considered contributions to construction and after the original contribution in any future connection by a user other than to a lot owned by a party making a previous contribution, such user shall be required to pay to the City his/her pro rata share of the lot or lots owned by the new attaching user in the entire extension cost as if said user had been one (1) of the original contributors.
- (5) When the City receives a future contribution, it shall after receiving the money, pay said money to the previous contributors by paying to each of the previous contributors equal amounts by counting each previous contributing lot as a separate contributor. The City shall not make payments to a previous contributor if ten (10) years have expired from the date of the original contribution. Said money paid shall be retained by the City.
- (6) It is hereby provided that the right to contribution shall follow the land and not the contributor with the reimbursement to go to the person who is the owner of the receiving lot at the time of the reimbursement. If a contributor owns more than one (1) lot at the time of contribution, he/she shall be required to designate one (1) of the lots as the lot entitled to contribution and the owner of such a lot at the time of any contribution shall receive the reimbursements for all of the lots owned by the original contributor at the time of the original contribution. Such lot designation shall be filed with the City Clerk-Treasurer of the City of Westby, Vernon County, Wisconsin, and may be filed in the Office of the Register of Deeds for Vernon County, Wisconsin. The owner of such designated lot may, be filing a corrective designation, change said designation to another lot owned by him/her as long as such new lot is one (1) of the lots to be served by said extension. The total amount of reimbursement that any contributor may receive shall be the total payment made by him/her less the benefits conferred upon the lot or lots owned by him/her at the time of his/her contribution.
- (7) In addition to the charge made as above provided to each lot, each user shall pay the full cost of the lateral from the main to his/her building.

(h) **Additional Authority.** The Common Council may at any time establish specific connection and lateral charges for any main not covered by any other provisions in this Chapter or when the City has made an extension and the Common Council has failed to provide lateral or connection charges. It is further provided that the Common Council may amend or alter any connection or

lateral charge after its establishment under the terms of this Chapter or previous ordinance or resolutions.

#### **Sec. 9-2-4 Use of the Public Sewers.**

- (a) **Prohibitions Against Discharge.** No person shall discharge or cause to be discharged any of the following described liquids or solid wastes to any sanitary sewer:
- (1) Any storm water, surface water, ground water, roof run-off or surface drainage or any other connections from inflow sources to the sanitary sewer. Such waters may be discharged to a storm sewer or other waterway with permission of the City of Westby.
  - (2) Any gasoline, benzene, naptha, fuel oil, lubricating oil or other flammable or explosive liquid solid or gas or other substances which by themselves or by interaction with other substances may cause fire or explosion hazards, or in any other way be injurious to persons, property, or the operation of the wastewater facilities.
  - (3) Any waters or waste containing toxic or poisonous substance in sufficient quantity, either singly or by interaction with other wastes, which will injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a public nuisance in the receiving waters of the wastewater treatment plant, or interfere with the disposal of sludge.
  - (4) Any waters or wastes having a pH lower than six (6) or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel or the wastewater works.
  - (5) Any waters or wastes having a pH in excess of nine (9).
  - (6) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and flashings, entrails, and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
  - (7) Any discharge into the sanitary sewerage system that is in violation of the requirements of the WPDES Permit and the modifications thereof.
  - (8) Wastewater having a temperature higher than one hundred fifty (150) degrees Fahrenheit.
  - (9) Any water or wastes which may contain more than one hundred (100) parts per million by weight of oils, fat, or grease.
  - (10) Any garbage that has not been properly shredded. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.
  - (11) Any waters or waste containing iron, chromium, copper, zinc, mercury, and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the Approving Authority for such materials.
  - (12) Any waters or wastes containing odor-producing substances exceeding limits which may be established by the Approving Authority.
  - (13) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Approving Authority in compliance with applicable State or Federal regulations.
  - (14) Quantities of flow, concentrations, or both which constitute a "Shock" as defined herein.
  - (15) Incompatible pollutants containing substances which are not amenable to treatment or

reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(16) Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.

(17) Materials which exert or cause:

- a. Unusual BOD, chemical oxygen demand or chlorine requirements such as, but not limited to, whey in such quantities as to constitute a significant load on the wastewater treatment plant.
- b. Unusual volume of flow or concentration of wastes constituting "Shocks" as defined herein.
- c. Unusual concentrations of inert suspended solids (such as, but not limited to, fuller's earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium sulfate).
- d. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

(b) **Septic Tank and Holding Tank Disposal.** No person in the business of gathering and disposing of septic tank sludge or holding tank sewage shall transfer such material into any disposal area or sewer manhole located with the City of Westby.

(c) **Special Agreements.** No statement contained in this Section shall be construed as prohibiting any special agreement between the Approving Authority and any person whereby an industrial waste of unusual strength or character may be admitted to the wastewater treatment works, either before or after pretreatment, provided that there is no impairment of the functioning of the wastewater treatment works by reason of the admission of such wastes, and no extra costs are incurred by the City without recompense by the person, provided that all rates and provisions set forth herein are complied with.

(d) **Permit Required.** It shall be unlawful to discharge to any natural waterway within the City of Westby or in any area under the jurisdiction of said City of Westby any sewage or other polluted waters, without first obtaining a Wisconsin pollutant discharge elimination system permit (WPDES permit).

### **Sec. 9-2-5 Sewer Use Charge System.**

(a) **Definitions.** The following terms shall have the following means under this Chapter, particularly in this Section:

- (1) **Normal Domestic Strength Wastewater.** Wastewater with concentrations of BOD and suspended solids no greater than two hundred (200) and two hundred fifty (250) milligrams per liter (mg/l) respectively.
- (2) **Replacement Costs.** All costs associated with establishing a fund to accumulate the necessary resources to replace equipment as required to maintain capacity and performance during the design life of the plant.
- (3) **Operation and Maintenance Costs.** All costs associated with the operation and maintenance of the wastewater collection and treatment facilities. These costs, including costs associated with extraneous (clear water) flows, shall be divided proportionately among the various sewer users according to their equivalent user factors.
- (4) **Debt Service Costs.** All costs associated with repayment of debts incurred for the construction and/or rehabilitation of the wastewater collection system and treatment plant.

These costs, including costs associated with extraneous (clear water) flows, shall be divided evenly among all sewer users.

- (5) **Normal User.** A user whose contributions to the wastewater treatment works consist only of normal domestic-strength waste originating from a house, apartment, flat, or other living quarters occupied by a person or persons constituting a distinct household, business or commercial enterprise.
- (6) **User Charge** is a charge levied on users of the wastewater collection and treatment facilities as a part of the Sewer Service Charge for payment of operation and maintenance costs of said facilities.

(b) **Policy.**

- (1) It shall be the policy of the City of Westby to obtain sufficient revenues to pay the cost of:
  - a. The annual debt retirement payment on any bonded indebtedness,
  - b. Any required cash reserve account payment, and
  - c. Operation and maintenance of the sewage works, including a replacement fund, (i.e. a cash account to be used for future expenditures for obtaining or installing equipment, accessories or appurtenances which are necessary to maintain the capacity and performance of the sewerage works during the service life or which such works were designed and constructed), through a system of user charges as defined in this Section.
- (2) The system shall assure that each user of the sewer works pays a proportionate share of the cost of such works.
- (3) Each new individual sewer lateral connected to a City main shall be assessed a one-time Two Hundred Fifty Dollar (\$250.00) connection fee.

(c) **Basis for User Charge.**

- (1) The minimum quarterly billing shall be sufficient to pay the annual debt retirement. A portion of the debt service may be budgeted by levying an advalorem tax in accordance with State Statutes. The unit price per volume shall be sufficient to pay the annual cost of operation and maintenance, including any replacement fund, or the sewage works. The methodology of determining the user charges is given in the User Charge System. The utility shall provide the initial estimates of number of users, costs, etc., to calculate the first year's user charges.
- (2) The user charges, and this Chapter, shall be reviewed at least once per year. Such review shall be performed by the Mayor, the City Clerk-Treasurer, and the Utility Supervisor. User charges shall be adjusted, as required, to reflect actual number and size of users and actual costs. Users will be notified annually of the portion of user charges attributable to operation and maintenance. User charges shall be adjusted, if necessary, on October 1 of each year.

(d) **Sewer Charges.** A sewer service and user charge are hereby imposed upon each lot, parcel of land, building, or premises served by the public sewer and wastewater facilities. Such sewer service charge shall be payable as hereinafter provided, and, in amount determinable as follows:

- (1) Category A is defined as normal or domestic strength wastewater having organic concentrations of biochemical oxygen demand (BOD) no greater than two hundred (200) milligrams per liter (mg/l) and suspended solids no greater than two hundred fifty (250) milligrams per liter (mg/l). The sewer charge for Category A wastewater is as follows:

**Minimum Sewer Service Charge with One Customer on Each Meter**

<b>Meter Size</b>	<b>Charge Per Month</b>
5/8" and 3/4"	\$ 22.00
1"	\$ 44.00
1-1/2"	\$ 88.00

2"	\$154.00
3"	\$352.00
4"	\$616.00

In addition, a volumetric charge is assessed. The volumetric charge is based on a waste strength of two hundred (200) mg/l BOD and two hundred fifty (250) mg/l SS.

$$V.C. = C_v \times V$$

V.C = Total volumetric charge

V = Total volume of water used during billing period in units of 100 cubic feet

CV = Volume unit price = \$4.69 per 100 cubic feet

\$4.69 is for operation and maintenance

- (2) Category B is defined as wastewater having organic concentrations of Biochemical Oxygen Demand (BOD greater than two hundred (200) milligrams per liter (mg/l) and/or suspended solids (SS) greater than two hundred fifty (250) milligrams per liter (mg/l). The minimum Category B charge will be based on a concentration of two hundred (200) mg/l BOD and two hundred fifty (250) mg/l SS. The equation for the monthly Category B charge is as follows:

SSC = Total sewer service charge

SSC = Category A charge (fixed plus volumetric) plus High Strength Surcharge

High Strength Surcharge = CV x BOD

CB = BOD Unit Price = \$0.76 per pound

BOD = (1,000) pounds of BOD discharged during billing period in excess of 200 mg/l

High Strength Surcharge = CV x SS

CB = BOD Unit Price = \$0.40 per pound

BOD = (1,000) pounds of BOD discharged during billing period in excess of 200 mg/l

- (3) **Reassignment of Sewer Users.** The Approving Authority will reassign sewer users into appropriate Sewer Service Charge categories if wastewater sampling programs and other related information indicate a change of categories is necessary.

### Sec. 9-2-6 Control of Industrial Wastes.

- (a) **Industrial Discharges.** If any waters or wastes are discharged, or proposed to be discharged, to the public sewers, which waters or wastes contain substances or possess the characteristics enumerated in Section 9-2-9 and which, in the judgment of the Approving Authority, may have deleterious effects upon the wastewater treatment works, processes, equipment, or receiving waters, or which otherwise create a hazard to life, health, or constitute a public nuisance, the Approving Authority may:

- (1) Reject the wastes.

- (2) Require pretreatment to an acceptable condition for discharge to the public sewers
  - (3) Require a control over the quantities and rates of discharge.
  - (4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 9-2-4(c)
- (b) **Control Manholes.**
- (1) Each person discharging industrial wastes into a public sewer shall construct and maintain one (1) or more control manholes or access points to facilitate observation, measurement, and sampling of his/her wastes, including domestic sewage.
  - (2) Control manholes or access facilities shall be located and built in a manner acceptable to the Approving Authority. If measuring devices are to be permanently installed, they shall be of a type acceptable to the Approving Authority.
  - (3) Control manholes, access facilities, and related equipment shall be installed by the person discharging the waste, at his/her expense, and shall be maintained by him/her so as to be in safe condition, accessible, and in proper operating condition at all times. Plans for installation of the control manholes or access facilities and related equipment shall be approved by the Approving Authority prior to the beginning of construction.
- (c) **Measurement of Flow.** The volume of flow used for computing the sewer service and the cost recovery charges shall be based upon the water consumption of the person as shown in the records of meter readings maintained by the Westby Water Utility.
- (d) **Provision for Deductions.** In the event that a person discharging industrial waste into the public sewers produces evidence satisfactory to the Approving Authority that more than ten percent (10%) of the total annual volume of water used for all purposes does not reach the public sewer, then the determination of the water consumption to be used in computing the waste volume discharged into the public sewer may be made a matter of agreement between the Approving Authority and the person.
- (e) **Metering of Waste.** Devices for measuring the volume of waste discharged may be required by the Approving Authority if this volume cannot otherwise be determined from the metered water consumption records. Metering devices for determining the volume of water shall be installed, owned, and maintained by the person. Following approval and installation, such meters may not be removed without the consent of the Approving Authority.
- (f) **Waste Sampling.**
- (1) Industrial wastes discharged into the public sewers shall be subject to periodic inspection and a determination of character and concentration of said wastes. The determinations shall be made by the industry as often as may be deemed necessary by the Approving Authority.
  - (2) Samples shall be collected in such a manner as to be representative of the composition of the wastes. The sampling may be accomplished either manually or by the use of mechanical equipment acceptable to the Approving Authority.
  - (3) Testing facilities shall be the responsibility of the person discharging the waste and shall be subject to the approval of the Approving Authority. Access to sampling locations shall be granted to the Approving Authority or its duly authorized representatives at all times. Every care shall be exercised in the collection of samples to insure their preservation in a state comparable to that at the time the sample is taken.
- (g) **Pretreatment.** When required, in the opinion of the Approving Authority, to modify or eliminate wastes that are harmful to the structures, processes, or operation of the wastewater treatment works, the person shall provide at his/her expense such preliminary treatment or processing facilities as may be required to render his/her wastes acceptable for admission to the public sewers.

- (h) **Grease and/or Sand Interceptors.**
- (1) Grease, oil and sand interceptors shall be provided when, in the opinion of the Approving Authority, they are necessary for the proper handling of liquid wastes, containing floatable grease in excessive amounts, as specified in Section 9-2-4(a), or any flammable wastes, sand, or other harmful ingredients.
  - (2) All interceptors shall be of a type and capacity approved by the Approving Authority, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates and means of disposal which are subject to review by the Approving Authority. Any removal and hauling of the collected materials not performed by the owner(s) personnel, must be performed by currently licensed waste disposal firms. All interceptors are subject to inspections by representatives of the Approving Authority. The Approving Authority and/or its representatives may enforce proper cleaning and maintenance of interceptors and bill the cost thereof to the owner pursuant to Sec. 66.0119, Wis. Stats.
- (i) **Analyses.**
- (1) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this Chapter shall be determined in accordance with the latest addition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association and "Guidelines Establishing Test procedures for Analysis of Pollutants", (1978,40 CFR 136). Sampling methods, locations, times, durations, and frequencies are to be determined on an individual basis subject to approval by the Approving Authority.
  - (2) Determination of the character and concentration of the industrial wastes shall be made by the person discharging them or his/her agent, as designated and required by the Approving Authority. The Approving Authority may also make its own analyses on the wastes and these determinations shall be used as a basis for charges. If the person discharging the waste contests the determination, the Approving Authority may elect to have an independent laboratory determine the character and concentration of the waste. Said independent laboratory shall be acceptable to both the City and the person discharging the waste. All cost incurred by the independent laboratory in making the determination shall be assumed by the discharger.
- (j) **Submission of Information.** Plans, specifications, and any other pertinent information relating to proposed flow equalization, pretreatment, or processing facilities shall be submitted for review of the Approving Authority prior to the start of their construction if the effluent from such facilities is to be discharged into the public sewers.
- (k) **Submission of Basic Data.**
- (1) Within three (3) months after passage of this Chapter, each person who discharges industrial wastes to a public sewer shall prepare and file with the Approving Authority a report that shall include pertinent data relating to the quantity and characteristics of the waste discharged to the wastewater works.
  - (2) Similarly, each person desiring to make a new connection to a public sewer for the purpose of discharging industrial wastes shall prepare and file with the Approving Authority a report that shall include actual or predicted data relating to the quantity and characteristics of the waste to be discharged.
- (l) **Extension of Time.** When it can be demonstrated that circumstances exist which would create an unreasonable burden on the person to comply with the time schedule imposed herein, a request for extension of the time may be presented for consideration by the Approving Authority.



### **Sec. 9-2-7 Payment of Charges.**

- (a) **Payment and Penalty.** The sewerage service charge shall be for the corresponding period of the water bills, and shall be payable to the Utility Clerk of the City of Westby, Wisconsin, not later than twenty (20) days after the end of each period. A penalty of one percent (1%) per month shall be added to all bills not paid by the date fixed for final payment.
- (b) **Charges a Lien.** All sewage charges shall be lien upon the property served pursuant to Sec. 66.076(7), Wis. Stats., and shall be collected in the manner therein provided.
- (c) **Disposition of Revenue.** The amounts received from the collection of charges authorized by this Chapter shall be credited to a sanitary sewerage account which shall show all receipts and expenditures of the sewerage system. When appropriated by the Common Council, the credits to said account shall be available for the payment of the requirements for operation, maintenance, repairs, and depreciation of the sewerage system consistent with 40 CFR 35.929. Any surplus outside the preview of 40 CFR 35.929, in said account, shall be available for the payment of principal and interest of bonds issued and outstanding, or which may be issued, to provide funds for said sewerage system, or part thereof, and all or a part of the expenses for additions/and improvements and other necessary disbursements or indebtedness, and the Common Council may by Resolution pledge such surplus or any part thereof for any such purpose. All present outstanding sewer system general obligation bonds, including the refunding bonds, shall be paid from this fund as to both principal and interest.
- (d) **Additional Charges.** Additional charges shall be imposed upon each lot, parcel of land, building, or premises served by public sewer and wastewater facilities located outside the boundaries of the Approving Authority to equalize local capital costs. Such additional charges shall result in a minimum charge equal to the debt charge for each user according to the schedule for debt repayment from utility revenues. Such additional charges shall be added to the sewer bill for each billing period.
- (e) **Excess Revenues.** Excess revenues collected from a user class will be applied to operation and maintenance costs attributable to that class for the next year.

### **Sec. 9-2-8 Audit.**

The City shall conduct an Annual Audit, the purpose of which shall be to maintain the proportionality between users and user classes of the user charge system and to insure that adequate revenues are available relative to increasing operation, maintenance and replacement costs.

### **Sec. 9-2-9 Violations and Penalties.**

- (a) **Damages.** No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure of pertinence or equipment which is a part of the sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.
- (b) **Written Notice of Violation.** Any person found to be violating a provision of this Chapter shall be served by the Approving Authority with a written notice stating the nature of the violation and providing a reasonable time for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- (c) **Accidental Discharge.** Any person found to be responsible for accidentally allowing a deleterious discharge into the sewer system which causes damage to the treatment facility and/or receiving body of water shall, in addition to a fine, pay the amount to cover damages, both values to be established by the Approving Authority.

- (d) **Continued Violations.** Any person, partnership, or corporation, or any officer, agent, or employee thereof, who shall continue any violation beyond the aforesaid notice time limit provided shall, upon conviction thereof, forfeit not less than One Hundred Dollars (\$100.00), together with the costs of prosecution. In default of payment of such forfeiture and costs, said violator shall be imprisoned in the Vernon County Jail for a period not to exceed five (5) days. Each day in which any violation is continued beyond the aforesaid notice time limit shall be deemed a separate offense.
- (e) **Liability to City for Losses.** Any person violating any provisions of this Chapter shall become liable to the City for any expense, loss, or damage occasioned by reason of such violation which the City may suffer as a result thereof.
- (f) **Damage Recovery.** The system shall have the right of recovery from all persons, any expense incurred by said system for the repair or replacement of any sewer pipe damaged in any manner by any person by the performance of any work under their control, or by any negligent acts.
- (g) **Penalties.** Any person who shall violate any of the provisions of this Chapter or rules or regulations of the City of Westby; or who shall connect a service pipe without first having obtained a permit therefor; or who shall violate any provisions of the Wisconsin Statutes, Wisconsin Administrative Code, or any other materials which are incorporated by reference, shall upon conviction thereof be subject to a forfeiture per Section 1-1-7 and the costs of prosecution. This, however, shall not bar the City from enforcing the connection duties set out in Section 9-2-3(c) for mandatory connection.

#### **Sec. 9-2-10 Validity.**

- (a) **Repeal of Conflicting Ordinances.** All ordinances, resolutions, orders or parts thereof heretofore adopted, enacted or entered in conflict with this Chapter shall be and the same are hereby repealed.
- (b) **Savings Clause.** If any provision of this Chapter is found invalid or unconstitutional or if the application of this Chapter to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or application of this Chapter which can be given effect without the invalid or unconstitutional provision of application.
- (c) **Amendments.** The City, through its duly qualified governing body, may amend this Chapter in part or in whole wherever it may deem necessary.

## **Title 9 – Chapter 3**

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### **Electric Utility Regulations and Rates**

**Please refer to the Public Service Commission  
Tariff for the City of Westby at the following link:**

**<https://apps.psc.wi.gov/RATES/tariffs/viewfile.aspx?type=electric&id=6400>**

**A hard copy is also available at City Hall.**

# Title – Chapter 4

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## Cable Television

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### Sec. 9-4-1 Short Title.

This Chapter shall be known and may be cited as the Mediacom, Inc., Community Antenna Television Franchise Ordinance.

### Sec. 9-4-2 Definitions.

For the purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) **City.** The City of Westby, Wisconsin.
- (b) **Council.** The Common Council of the City of Westby.
- (c) **Community Antenna Television System,** hereinafter referred to as "CATV System" or "system." A system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee.

- (d) **Person.** Any person, firm, partnership, association, corporation, company or organization of any kind.
- (e) **Grantee.** Mediacom, Inc.

**Sec. 9-4-3 Grant of Exclusive Authority.**

- (a) There is hereby granted by the City to the Grantee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions hereto in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a CATV system for the interception, sale and distribution of television and radio signals.
- (b) The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this Franchise.

**Sec. 9-4-4 Transfer of Franchise.**

The Grantee shall not transfer this Franchise to another person without prior approval of the City by ordinance.

**Sec. 9-4-5 Territorial Area Involved.**

This Franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise.

**Sec. 9-4-6 Subscriber Privacy.**

- (a) No monitoring of any terminal connected to the system shall take place without specific written authorization by the user of the terminal in question on each occasion and without written notice to the City.
- (b) Grantee shall not, except as required by governmental action, provide any data concerning specific subscribers or users or their use of its services without first securing written authorization for the provision of such data.
- (c) The subscriber or user shall retain the right to deactivate his or her terminal, but shall continue to be responsible for charges until the Grantee is notified to terminate service.

**Sec. 9-4-7 Removal of Facilities Upon Request.**

Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

**Sec. 9-4-8 Technical Performance.**

The cable system shall be operated to comply with all guidelines and standards set by the FCC for signal quality and leakage. The City reserves the right to test the system and independently measure the signal quality. The system shall comply at all times with the National Electrical Code of the National Fire Protection Association.

**Sec. 9-4-9 Operation and Maintenance of System.**

The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruption, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

**Sec. 9-4-10 New Developments.**

It shall be the policy of the City to liberally amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently, or economically serve its customers. Provided, however, that this Section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

**Sec. 9-4-11 Description of System.**

Grantee shall, as part of the acceptance of this Franchise, provide a complete written description of the cable system in the City of Westby. Such written description shall be updated as additions or changes are made.

**Sec. 9-4-12 Rates.**

- (a) Rates charged by the Grantee for service hereunder shall be fair and reasonable. The Grantee shall not engage, directly or indirectly, in any sales or service of individual television sets. Before any service is sold to any customer, the Grantee shall file with the City Clerk-Treasurer its schedule of rates for installation and monthly service charges, together with a statement of the rights and obligations of subscribers.
- (b) Subsequent additions or amendments to rates and service charges shall likewise be filed with the City Clerk-Treasurer before same become effective.

**Sec. 9-4-13 Payment to the City.**

The Grantee shall pay to the utility annually a per pole amount per Sec. 1-3-1 on a single attachment or joint attachment basis. This payment shall be in addition to any other tax or payment owed to the City by the Grantee.

**Sec. 9-4-14 City Rights in Franchise.**

- (a) The right is hereby reserved to the City or the Common Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations by ordinance or otherwise shall be reasonable and not in conflict with the rights herein granted.
- (b) The City shall have the right to inspect the books, records, maps, plans, income tax returns, and other like materials of the Grantee at any time during normal business hours.
- (c) The City shall have the right during the life of this Franchise to install and maintain upon the poles of the Grantee any wire and pole fixtures necessary for a police alarm system, free of

charge, on the condition that such wire and pole fixtures do not interfere with the CATV operations of the Grantee.

- (d) The City shall have the right to supervise all construction or installation work performed subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise and other pertinent provisions of law. At the expiration of the term or renewal thereof for which this Franchise is granted, or upon its termination and cancellation as provided for herein, the City shall have the right to require the Grantee to remove at its own expense all portions of the CATV system from all public ways within the City.
- (e) After the expiration of the term or renewal thereof for which this Franchise is granted, or after its termination and cancellation as provided for herein, the City shall have the right to determine whether the Grantee shall continue to operate and maintain the CATV system pending the decision of the City as to the future maintenance and operation of such system.

### **Sec. 9-4-15 Compliance with Applicable Laws and Ordinances.**

The Grantee shall at all times during the life of this Franchise be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide.

### **Sec. 9-4-16 Indemnity.**

- (a) **Indemnification.** The Grantee shall defend and save the City and its agents and employees harmless from all claims, damages, losses, and expenses, including attorney's fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of:
  - (1) The enactment of this Chapter and granting of a franchise thereunder, except such claims as may arise from the City's selection of a grantee to be awarded a franchise pursuant to this Chapter.
  - (2) The installation, operation, or maintenance of the Cable TV Network except for acts of the City, its agents or employees, unless said acts are the request of and under the direction or supervision of grantee.
- (b) **Notice.** The City shall notify the Grantee within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on the part of the Grantee. The Grantee shall furnish to the City, before this Franchise becomes effective, satisfactory evidence in writing that the Grantee has public liability insurance in force and will maintain same in force during the term of this Franchise.
- (c) **Liability Insurance.** All Grantees shall maintain throughout the term of the permit a general comprehensive liability insurance policy naming as the additional insured the City, its officers, boards, commissions, agents and employees, in a company approved by the Common Council and in a form satisfactory to the City Attorney, protecting the City and its agencies and employees against liability for loss or damage for personal injury, death or property damage, occasioned by the operations of Grantee under any Franchise granted hereunder, in the amounts of:
  - (1) Three Hundred Thousand Dollars (\$300,000) for bodily injury or death to any one (1) person with the limit, however, or Five Hundred Dollars (\$500,000) for bodily injury or death resulting from any one (1) accident.
  - (2) Three Hundred Thousand Dollars (\$300,000) for property damage resulting from any one (1) accident.
  - (3) One Million Dollars (\$1,000,000) for a general liability, "umbrella" policy.

- (d) **City As Additional Insured.** The City shall be named as an additional insured under such insurance and a copy of the current in-force policy or certificate of insurance naming the City shall be deposited with the City Clerk-Treasurer.

**Sec. 9-4-17 Theft of Service and Tampering.**

- (a) No person, whether or not a subscriber to the cable system, may intentionally or knowingly damage or cause to be damaged any wire, cable, conduit, equipment or apparatus of Grantee or commit any act with intent to cause such damage, or to tap, tamper with, or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of Grantee with the intent to obtain a signal or impulse from the cable system without authorization from the Grantee, or to obtain cable television or other communications service with intent to cheat or defraud Grantee of any lawful charge to which it is entitled.
- (b) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over the City's cable system.

**Sec. 9-4-18 Severability.**

Should any word, phrase, clause, sentence, paragraph or portion of this Chapter and Franchise be declared to be invalid by a court of competent jurisdiction, such adjudication shall not affect the validity of this Chapter and Franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the Common Council hereby expressly states and declares that it would nonetheless have passed this Chapter and granted this Franchise had it known that any such word, phrase, clause, sentence, paragraph or portion of said Franchise were invalid.

**Sec. 9-4-19 Duration and Acceptance of Franchise.**

- (a) This Franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of ten (10) years, provided that within ten (10) days after the date of the passage of this Chapter the Grantee shall file with the City Clerk-Treasurer its unconditional acceptance of this Franchise and promises to comply with and abide by all its provisions, terms and conditions.
- (b) Should the Grantee fail to comply with Subsection (a) above, he shall acquire no rights, privileges, or authority under this Franchise whatsoever.
- (c) The Grantee shall have the right to apply to the City for renewal or extension of the Franchise. The City shall grant such renewal or extension applications unless it finds that:
  - (1) The Grantee has not substantially complied with the material terms of the Chapter and with applicable law, or its officers have been convicted of a felony;
  - (2) The legal, technical or financial qualifications of the Grantee are inadequate to provide the services proposed by it;
  - (3) The services and facilities to be provided by the Grantee are unreasonable in light of the community need for and cost of such services and facilities;
  - (4) The service quality of the cable system has not been reasonable in light of community needs; or
  - (5) The proposals contained in the renewal application are otherwise unreasonable.



- (d) The Grantee must file for renewal at least thirty (30) months before the expiration of the Franchise. The City:
  - (1) Must consider the renewal application within one hundred twenty (120) days of submission of the application and conduct any proceedings necessary to adequately consider the application; and
  - (2) May not request, accept, or consider any other franchise application until the Grantee's application is denied or approved.
- (e) The City shall:
  - (1) Negotiate in good faith with the Grantee regarding franchise renewal within sixty (60) days after the completion of proceedings pursuant to Subsection (d) and;
  - (2) Make a preliminary decision on granting or denying renewal within four (4) months after receipt of an application;
  - (3) In the case of denial of an application, notify the Grantee by written statement within seven (7) days after the final decision of the reasons for the denial.
- (f) The Grantee, if adversely affected or aggrieved by a final decision of the City made pursuant to this Section, may appeal such final decision in any court of competent jurisdiction. The Franchise shall remain in effect pending the completion of such appeal.
- (g) Both the City and Grantee shall comply with all the provisions of Section 626 of the Cable Communications Policy Act of 1984 regarding renewal procedures.

#### **Sec. 9-4-20 Incorporation of Amendments.**

This Franchise shall be amended to incorporate all amendments to the statutes, rules and regulations of the federal government as they are promulgated by the federal government. Any provision herein, in conflict with or preempted by said rules and regulations or statutes, shall be superseded.

#### **Sec. 9-4-21 Protection of Nonsubscribers.**

Grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with signals received by private receiver's sets owned by persons not subscribing to the Grantee's service.

#### **Sec. 9-4-22 Grantee Rules.**

The Grantee may promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted service to all its subscribers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Chapter of the law of the State.

#### **Sec. 9-4-23 Grantee without Recourse.**

- (a) Grantee shall have no recourse whatsoever against the City for any loss, cost or expense, or damage arising out of any provisions or requirements of this Franchise or because of the enforcement thereof by the City, provided, however, Grantee shall be entitled to such recourse against the City if Grantee reasonably finds that the City is improperly enforcing this Franchise, nor for the failure of the City to have authority to grant all or any part of this Franchise.

- (b) Grantee expressly acknowledged that on accepting this Franchise, it did so relying on its own investigation and understanding of the power and authority of the City to grant this Franchise.
- (c) By acceptance of this Franchise, Grantee acknowledged that it has not been induced to enter into this Franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City or by any other third person concerning any term or condition of this Franchise not expressed herein.
- (d) Grantee further acknowledges by acceptance of this Franchise that it has carefully read the terms and conditions hereof and is willing to and does accept all the risks of the meeting of such terms and conditions and agrees that in the event of any ambiguity therein or in the event of any dispute over the meaning thereof, the same shall be construed strictly against the Grantee and in favor of the City.

#### **Sec. 9-4-24 Contest of Validity.**

Grantee agrees by acceptance of this Franchise that it will not at any time set up against the City in a claim for proceeding any condition or term of this Franchise as unreasonable, arbitrary or void, or that the City had no power or authority to make such term or condition, but shall be required to accept the validity of the terms and conditions of this Franchise in their entirety.

#### **Sec. 9-4-25 Forfeiture of Franchise.**

- (a) In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, the City reserves the right to terminate and cancel this Franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:
  - (1) Makes any material violation of any provision of this Franchise or any rule, order, or determination of the City or City Council made pursuant to this Franchise, except where such violation, other than of Subsection (a)(2) below, is without fault or through excusable neglect;
  - (2) Becomes insolvent, unable or unwilling to pay his debts, including personal property taxes levied by this City, or is adjudged bankrupt;
  - (3) Attempts to collect for any cable television service rendered to any resident of Westby prior to the issuance of this Franchise.
- (b) Such termination and cancellation shall be by ordinance duly adopted after thirty (30) days' notice to the Grantee and shall in no way affect any of the City's rights under this Franchise or any provision of law. In the event that such termination and cancellation depends upon a finding of fact as made by the Common Council or its representative, said finding of fact shall be conclusive. Provided, however, that before this Franchise may be terminated and canceled under this Section, the Grantee must be provided with an opportunity to be heard before the Common Council.

#### **Sec. 9-4-26 Federal Regulations.**

- (a) Any City regulation of the Cable Company will be consistent with and follow the rate regulations promulgated by the Federal Communication Commission as amended from time to time.

- (b) Any City regulation will provide reasonable opportunity for consideration of the views of interested parties;
- (c) The City Mayor is designated as the Cable Administrator responsible for the implementation of any City rate regulation.

# Title 9 – Chapter 5

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## Natural Gas

9-5-1 Franchise to Midwest Natural Gas, Inc.

### Sec. 9-5-1 Franchise to Midwest Natural Gas, Inc.

- (a) **Grant of Authority.** There is hereby granted to Midwest Natural Gas, Inc.; a Wisconsin corporation, its successors and assigns, hereinafter referred to as "Company" the right and privilege to acquire, erect, construct, operate and maintain a gas plant, gas system, or both, and to import, transport, sell and distribute gas, whether natural, manufactured, mixed or propane within the City of Westby, and for these purposes to establish the necessary facilities and equipment and to lay and maintain gas mains, service pipes and any other appurtenances necessary to the sale and distribution of gas in and along the street, alleys and other public ways and places of the City of Westby; provided, however, that nothing herein shall prevent or limit any person from importing, transporting, selling or distributing liquid petroleum or liquid propane gas within said City. This Chapter shall be void if the Company shall not have commenced to provide service within a three (3) year period after acceptance date.
- (b) **Conditions of Street Occupancy.**
- (1) **Use.** All pipes, mains and other natural, artificial or mixed gas equipment and apparatus laid or placed by the Company shall be so located in the streets, alleys, public ways and placed in the City of Westby as not to obstruct or interfere with any water pipes, sewers, drains or other structures. The Company shall, when practicable, avoid interfering with the use of any street, alley or other highways where the paving or surface of such street, alley or other highway would be disturbed. Proposed location of all pipes and mains shall be submitted to the Council of the City of Westby or its designated committee, to coordinate the best interests of the City of Westby and the Company.
- (2) **Restoration.** If the Company shall disturb any pavement, sidewalk, streets, alleys, driveway or other surfacing, then in such event, the Company shall, at its own cost and expense and in a manner approved by the City of Westby replace and restore to a condition as good as that before such disturbance any such disturbed pavement, sidewalk, street, alley, driveway or other surfacing.
- (3) **Relocation.** In the event that at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, alley, or other public place or way, the Company, upon reasonable notice by the City, shall remove, re-lay and relocate, at its own expense, the Company's pipes, mains and other gas fixtures.
- (c) **Service and Rates.** The Company shall render efficient service and charge fair and reasonable rates in accordance with the rules and regulations of the Public Service Commission of Wisconsin.
- (d) **Company Rules.** The Company shall have the power and authority to promulgate such rules regulations terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and to perform its obligations under this Franchise in accordance with the rules and regulations of the Public Service Commission of Wisconsin.
- (e) **Company Liability-Indemnification.** It is expressly understood and agreed by and between the Company and the City that the Company shall save the City of Westby harmless from any suit, judgment, execution, claim or demand whatsoever, resulting from any negligence on the part of

the Company in the construction, operation or maintenance of its gas system in the City of Westby. The City of Westby shall notify the Company's representatives within five (5) days after the presentation of any claim or demand, either by suit or otherwise, made against the City of Westby, on account of any negligence as aforesaid on the part of the Company.

- (f) **Acceptance.** The Company, its successors and assigns, shall if it accepts this Section with the City of Westby within sixty (60) days from the date of publication of this Section.