

CHAPTER FIVE. MUNICIPAL REGULATION AND LICENSING

PART 1. GENERAL LICENSING AND PERMIT PROVISIONS

501.01 LICENSES AND PERMITS

Subdivision 1. General rule. Except as otherwise provided in this code, all licenses and permits granted by the City shall be governed by the provisions of this part.

Subdivision 2. Acts Prohibited. No person shall conduct any activity or use any property for which a license or permit is required by law or this code without a currently valid license or permit for such activity or use.

Subdivision 3. Application. Every application for a license shall be made to the Clerk on a form provided by him. It shall be accompanied by payment to the Clerk of the prescribed fee. If, after investigation, the Clerk is satisfied that all requirements of law and this code have been met, he shall present the application to the Council for action or, if the license or permit does not require Council approval, he shall issue the license or permit.

501.02 REVOCATION

Any license may be revoked by the Council for a violation of the section or chapter under which it is issued. However, the revocation must follow any procedure provided in the section or chapter in question.

501.03 APPEAL

Any person who has made application which has been denied or not acted upon within 30 days after the application may apply directly to the Council for a license. The application to the Council shall contain the same information required in the original application, plus any additional information that the Council may require or that the applicant may feel is pertinent. The Council may grant the license, after hearing, if the requirements of this code are substantially complied with, and in the opinion of the Council granting the license would be in the best interests of the public.

501.04 FEES

Subdivision 1. Fees Established. License fees shall be in the amounts established in the governing sections of this chapter or as otherwise provided in this code or adopted by Council resolution. The license and permit fees as set forth in the various sections of this code or as established from time to time by the Council are the official and controlling fees.

Subdivision 2. Prorated Fees. License fees shall not be prorated unless otherwise specified by this code or by law.

Subdivision 3. Refunds. License fees shall not be refunded in whole or in part unless otherwise specified by this code or by law.

501.05 DURATION OF LICENSE

Unless otherwise specified, a license shall be valid for a calendar year or the part of the year for which it is issued and shall expire on December 31.

501.06 TRANSFERS

No license issued under this code may be transferred to any other person. Where a license relates to specific premises, the license shall not be changed to another location without approval of the Council or other licensing authority.

501.07 INSPECTION

Subdivision 1. Authorized Personnel. Any City official or employee having a duty to perform with reference to a license under this code and any police officer may inspect and examine any licensee, his business, or premises to enforce compliance with applicable provisions of this code. Subject to the provisions of Subdivision 2, he may, at any reasonable time enter any licensed premises or premises for which a license is required in order to enforce compliance with this code.

Subdivision 2. Search Warrants. If the licensee objects to the inspection of his premises, the City official or employee charged with the duty of enforcing the provisions of this code shall procure a valid search warrant before conducting the inspection.

501.08 DUTIES OF LICENSEE

Subdivision 1. Compliance Required. Every licensee and permittee shall have the duties set forth in this section.

Subdivision 2. Inspection. He shall permit at reasonable times inspections of his business and examination of his relevant books and records by authorized officers or employees.

Subdivision 3. Compliance with Law. He shall comply with laws, ordinances and regulations applicable to the licensed business, activity or property.

Subdivision 4. Display of License. He shall display the license or other insignia given him as evidence of the license in a conspicuous place on the premises, vehicle or device to which the license relates. If the license is not so related, the license shall be carried on the licensee's person whenever he is carrying on the licensed activity.

Subdivision 5. Unlawful Disposition. The licensee shall not lend or give to any other person his license or license insignia.

501.09 SUSPENSION OR REVOCATION

The Council may suspend for a period not exceeding 60 days or revoke any license or permit for violation of any provision of law, ordinance or regulation applicable to the licensed or permitted activity or property. Except where mandatory revocation is provided by law without notice and hearing and except where suspension may be made without a hearing, the holder of the license or permit shall be granted a hearing upon at least 10 days notice before revocation or suspension is ordered. The notice shall state the time and place of the hearing and the nature of the charges against the licensee.

PART 2. REFUSE COLLECTION AND DISPOSAL

502.01 GENERAL REGULATIONS

Subdivision 1. Refuse Defined. For the purpose of this Part, refuse is defined to include garbage and rubbish of all kinds that accumulate in the ordinary operation of a household, grass trimmings, ashes, tree branches, leaves and other solid waste. Rubbish also includes all kinds of solid waste that accumulates in the ordinary operation of a business or industry.

Subdivision 2. Unauthorized Accumulation. Any unauthorized accumulation of refuse on any premises is a nuisance and prohibited.

Subdivision 3. Prohibited Acts. No person shall place or cause to be placed any refuse in any street, alley or public place or upon any private property except in proper containers for collection. No person shall place or cause to be placed any refuse in or next to a garbage can, dumpster or other refuse container or receptacle or anywhere else on property that they do not own unless they have permission of the property owner. No person shall throw or deposit refuse in any stream or other body of water.

Subdivision 4. Scattering of Refuse. No person shall deposit anywhere within the City any refuse in any such manner that it may be carried or deposited by the elements upon any public or private premises within the City.

Subdivision 5. Burying of Refuse; Composting. No person shall bury any refuse in the City except in an approved sanitary landfill, but leaves, grass clippings and easily biodegradable, non-poisonous garbage may be composted on the premises where such refuse has been accumulated. Garbage may be composted only in a rodent-proof structure and in an otherwise sanitary manner and after the Council or City Clerk gives its approval to such composting after it or he finds that the composting will be done in accordance with these standards.

502.02 DISPOSAL REQUIRED

Every person shall, in a sanitary manner, dispose of refuse that may accumulate upon property owned or occupied by him. Garbage shall be collected, or otherwise lawfully disposed of, at least once each week.

502.03 CONTAINERS

Subdivision 1. General Requirement. Every householder, occupant or owner of any residence and any restaurant, industrial establishment or commercial establishment shall provide on the premises one or more containers to receive and contain all refuse which may accumulate between collections. All normal accumulations of refuse shall be deposited in such containers. Leaves, trimmings from shrubs, grass clippings, shavings, excelsior and other rubbish of similar volume and weight may be stored in closed containers not meeting the requirements of Subdivision 2.

Subdivision 2. Container Requirements. Each container shall be water-tight, shall be impervious to insects and rodents, shall be fireproof, and shall not exceed 32 gallons in capacity, except that any location or building having refuse volume exceeding two cubic yards per week shall provide bulk or box-type refuse storage containers of a number and type sufficient to handle all refuse in a sanitary manner. Containers shall be maintained in good and sanitary condition. Any container not conforming to the requirements of this chapter shall be promptly replaced.

Subdivision 3. Use of Containers. Refuse shall be drained of liquid; and household garbage shall be wrapped before being deposited in a container. Hazardous waste, highly inflammable or explosive material shall not be placed in containers.

PART 3. DOGS AND CATS

503.01 DEFINITIONS

Subdivision 1. Owner. As used in this ordinance, "owner" means any person, firm or corporation or department possessing, harboring, keeping, having interest in, or having care, custody, or control of a dog or cat.

Subdivision 2. At Large. No person shall permit any animal of which he is the owner, caretaker, or custodian to be at large within the City. Any such animal is deemed to be at large when it is off the premises owned or rented by the owner or his agent and not under his individual physical restraint.

Subdivision 3. Officer. Police Officer, Animal Control Officer, or any other individual duly appointed by the City of Pelican Rapids.

Subdivision 4. Pound Master. The Chief of Police shall be pound master. He shall maintain or designate the City pound and perform other duties imposed on him by this part.

Subdivision 5. City Pound. The City Council, by appropriate council action, including but not limited to action by resolution or by ordinance, may at any time, designate a specific facility and/or business as the City pound for purposes of this part.

Subdivision 6. Dog. "Dog" means any domesticated dog, male or female, whole or neutered. Any wolf or wolf hybrid shall be deemed as an animal wild by nature and shall not be deemed as a "dog" under this Section.

Subdivision 7. Cat. "Cat" means any domesticated feline animals, male or female, Intact or neutered/spayed. A domesticated or owned cat is not a community cat. When the word "cat" is used, it is not a "community cat" but a domesticated feline.

- A. "Owned" means any domesticated feline that has an owner(s) and lives with the owner(s) in a domicile or home rented or owned by the owner(s).
- B. "Community cat" aka "free roaming cat" aka "feral cat" aka "notched cat" has no owner and maybe exempted from portions of this part.

Subdivision 8. Potentially Dangerous Dog or Cat or Community Cat. "Potentially dangerous dog or cat or community cat" means any dog or cat or community cat that:

- A. Has bitten a human or a domestic animal on public or private property; or
- B. When unprovoked, chased or approached a person upon the streets, sidewalks, or any public property in an apparent attitude of attack; or
- C. Has engaged in unprovoked attacks causing injury or otherwise threatening the safety of humans or domestic animals.

Subdivision 9. Dangerous Dog or Cat or Community Cat. "Dangerous dog or cat or community cat" means any dog or cat or community cat that has:

- A. Caused bodily injury or disfigurement to any person on public or private property; or
- B. Engaged in any attack on any person under circumstances which would indicate danger to personal safety; or
- C. Exhibited unusually aggressive behavior, such as an attack on another animal; or
- D. Bitten one or more persons on two or more occasions; or
- E. Been found to be potentially dangerous and/or the owner has personal knowledge of the same, the animal aggressively bites, attacks, or endangers the safety of humans or domestic animals.

Subdivision 10. Proper Enclosure. Securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal from the elements. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or

structure in which windows are open or in which door or window screens are the only barriers which prevent the animal from exiting. The enclosure shall not allow the egress of the animal in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

- A. Have a minimum overall floor size of 32 square feet.
- B. Sidewalls shall have a minimum height of five feet and be constructed of 11-gauge or heavier wire. Openings in the wire shall not exceed two inches, support posts shall be 13-inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground.
- C. A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and shall also have no openings in the wire greater than two inches.
- D. An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall also have no openings in the wire greater than two inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel.

503.02 PRIOR CONDITION(S). Any condition(s) that existed prior to the enactment of this ordinance will fall under the jurisdiction of this ordinance and remain in violation until the provision(s) of the ordinance are met.

503.03 RUNNING AT LARGE PROHIBITED. No dog or cat shall be permitted to run at large within the limits of the City. This restriction does not prohibit the appearance of any dog or cat upon streets or public property when the dog or cat is on a leash or is kept under the physical control of the person charged with its care. The length of the leash can be no longer than 6 feet. A properly working shock collar under control of the owner or responsible person is also acceptable.

503.04 LICENSES

Subdivision 1. License required. It is unlawful for the owner to keep any dog or cat, six months of age or more, within the City without securing an annual license from the City Clerk or pound representative, who shall provide application forms, keep a record of all licenses issued and shall procure a metal tag for each license.

- A. **License fees & Application.** The annual license fee shall be \$6.00 for each de-sexed dog or cat and \$24.00 for each intact dog or cat. Every license shall expire on December 31 of each license year and shall become delinquent on January 1 of the following year.

- B. Affixing Tag.** Upon payment of the license fee the City Clerk or city appointed person, shall deliver one appropriate tag to the owner of said licensed dog or cat. It is unlawful for any owner of any dog or cat to fail to have the tag firmly affixed to a collar which shall at all times be kept on the dog or cat for which the license is issued. A duplicate for a lost tag may be issued by the city upon presentation of the receipt showing the payment of license fee for the current year. Tags shall be non-transferable, and no refund shall be made on any license fee because of leaving the city or death of the dog or cat before expiration of the license.
- C. Vaccination Required.** Application for a dog or cat license shall be on a form supplied by the City and accompanied by a certificate from a veterinarian, duly licensed to practice veterinary medicine in the State of Minnesota. The certificate shall state that the dog or cat has been inoculated against rabies for at least the period for which the license is applied.
- D. Period.** All dog and cat licenses shall expire on January 1st of each license year and shall become delinquent on January 15th the following year or within six months after the dog's birth.
- E. Fees.** All fees for the licensing and impounding of dogs and cats, including penalties for late application, shall be fixed, determined and amended by the Council by consolidated ordinance or by resolution, and uniformly enforced.
- F. Impoundment.** The Officer may seize, impound or restrain any unlicensed dog or cat, or any dog or cat that is without a tag attached to a collar found in the City. The fact that the dog or cat is without a tag attached to its collar shall be presumptive evidence that the dog or cat is unlicensed. To enforce this Section, the officers are empowered and instructed to enter upon any public or private property on which they have reasonable cause to believe there is a dog or cat that is not licensed or tagged as required under this Section.

Subdivision 2. Disposition of Impounded Dogs and Cats.

- A. Notice of impounding.** The officer who seized, impounded or restrained any dog or cat shall without delay, notify the owner, personally or through the United States mail, if such owner be known to the officer or can be ascertained with reasonable effort; but if the owner be unknown or cannot be ascertained, then the officer shall make available to the police Department, City Hall and impounding kennel for the public inspection of the following information:
1. A description of the dog or cat; and
 2. Location of the impoundment; and
 3. Condition for its release; and

4. Observation of the animal's general health at time of impoundment.

B. Redemption. All dogs and cats seized, impounded or restrained pursuant to this section must be held by the pound master for redemption by the owner for at least five (5) regular business days. If, after the five regular business days an owner does not claim the dog or cat, then any right of redemption shall be deemed to have been waived and the dog or cat shall be disposed of as provided in Subparagraph C of this subdivision. Any impounded dog or cat shall be released to their owners, as follows:

1. If a resident of the City owns such a dog or cat after payment of the impounding fees, and in addition, in the case the dog or cat is not currently licensed, purchase of a license; or
2. If such dog or cat is owned by a person not a resident of the City, such owner must provide proof of current rabies immunization of any such dog or cat within 48 hours of release, excluding Saturdays, Sundays and legal holidays, and payment of the impounding fees for the period for which the dog or cat was impounded.

C. Disposition of Unclaimed Dogs and Cats. Any dog or cat which is not claimed within the five-day period, as defined herein, must be made available to any licensed institution which has requested the animal as required by Minnesota Statutes, Section 35.71. If a tag affixed to the animal, or by a statement by the animal's owner after the animal's seizure specifies that the animal may not be used for research, the animal must not be made available to any such institution and may, in the discretion destroyed in a proper and humane manner after the expiration of the five-day period.

Subdivision 3. Animal Pound Record. Upon the impoundment of any dog or cat pursuant to this Section, an accurate record of the time of such impoundment shall be kept on each animal. Impoundment records shall be preserved for a minimum of one year and shall show:

1. License Number & Rabies Tag; and
2. The description of the animal by species, breed, sex, approximate age, and other distinguishing traits; and
3. The location at which the animal was seized; and
4. Date and time of seizure; and
5. The name and address of the person from whom any animal was received; and
6. A statement of observation of the over-all health of the animal; and
7. The name and address of the person to whom any animal three months of age or older was transferred.

503.05 DOG AND CAT NUISANCES

Unlawful Acts. The Owner or custodian of any dog or cat shall prevent the dog or cat from committing in the City any act that constitutes a nuisance. It is a nuisance for any dog or cat:

1. to habitually bark or cry at night; or
2. to frequent school grounds, parks or public areas; or
3. to chase vehicles, to run at large; or
4. to molest or annoy any person away from the property of his owner or custodian; or
5. to damage, defile or destroy public or private property.

Failure of the owner or custodian of a dog or cat to prevent the dog or cat from committing such a nuisance is a violation of this ordinance.

503.06 POTENTIALLY DANGEROUS DOG OR CAT

- A. A potentially dangerous dog or cat is as defined in Section 503.01, Subdivision 8 of this ordinance.
- B. If a potentially dangerous dog or cat is reported to the City.
 1. The Officer will contact the owner; and
 2. The Officer will advise owner of "potentially dangerous dog or cat" status; and
 3. The Officer will explain that upon the 2nd report received by the City the dog or cat will be classified as a "Dangerous Dog or Cat", and will fall under the requirements of Section 503.07 of this ordinance.

503.07 DANGEROUS DOG OR CAT

- A. **City Registration Required.** It is unlawful to own a dangerous dog or cat in the city unless the dog or cat is registered as provided in this Subdivision.
- B. **Certificate of Registration.** The City shall issue a certificate of registration to the owner of a dangerous dog or cat if the owner presents sufficient evidence that:
 1. The owner has paid an annual fee of \$500.00, in addition to any regular dog or cat licensing fees, to obtain a certificate of registration for a dangerous dog or cat under this Section; and

2. A proper enclosure exists for the dangerous dog or cat and a posting on the premises with a clearly visible warning sign, including a warning symbol to inform children that there is a dangerous dog or cat on the property; and
 3. A surety bond issued by a surety company authorized to conduct business in the State of Minnesota in a form acceptable to the City in the sum of at least \$50,000, payable to any person injured by the dangerous dog or cat, or a policy of liability insurance issued by an insurance company authorized to conduct business in the State of Minnesota in the amount of at least \$50,000, insuring the owner for any personal injuries inflicted by the dangerous dog or cat; and
 4. The owner has had microchip identification implanted in the dangerous dog or cat as required under Minnesota Statutes 347.515.
- C. Dangerous Dog or Cat Designation Review.** Beginning six months after a dog or cat is declared a dangerous dog or cat an owner may request annually that the City review the designation. The owner must provide evidence that the dog's or cat's behavior has changed due to the dog's or cat's age, neutering, environment, completion of obedience training that included modification of aggressive behavior, or other factors. If the City determines, at its sole discretion, sufficient evidence that demonstrates that the dog's or cat's behavior has changed, the authority may rescind the dangerous dog or cat designation.
- D. County Registration Required.** It is unlawful to own or keep a dangerous dog or cat within the City unless such dog or cat is duly registered with the Ottertail County Auditor's Office.
- E. Tag Required.** It is unlawful for the owner of any dangerous dog or cat, to not have the standardized, easily identifiable tag affixed to the dog's or cat's collar at all times, identifying the dog or cat as dangerous. A police officer, animal control officer, warden, or other employee or agent of the City assisting a police officer or animal control officer, is hereby authorized to summarily destroy such animal.
- F. Enclosure and Muzzling Required.** It is unlawful for the owner of any dangerous dog or cat, to have such dog or cat outside a "proper enclosure" unless such a dog or cat is muzzled, as to prevent the dog or cat from biting any person or animal but not injurious to the dog or cat, and restrained by a substantial chain or leash and under the physical restraint of a responsible person.
- G. Destruction of Dangerous Dogs or Cats.** In the event that a dangerous dog or cat appears to be an immediate danger to any person or property, a police officer, animal control officer, warden, or other employee of the City assisting a police officer, is hereby authorized to summarily destroy such animal.
- H. Non-Application To Police Dogs.** The provisions of this Subdivision shall not apply to any dangerous dog used by law enforcement officials for public work.

I. Quarantine of Certain Dogs or Cats. Any dog or cat which bites a person shall be quarantined for such time as may be directed by the pound master, with the advice of a licensed veterinarian. During quarantine the animal shall be securely confined and kept from contact with any other animal. At the discretion of the pound master, the quarantine may be on the premises of the owner; however, if the pound master requires other confinement, the owner shall surrender the animal for the quarantine period to an animal shelter or shall, at his own expense, place it in a veterinary hospital.

J. Transfer of Ownership.

1. Upon transfer of ownership, previous owner must notify the City three days before the transfer. Information will include:
 - a) New owner's name; and
 - b) New owner's physical address and mailing address; and
 - c) New owner's phone number;
2. The new owner must be informed by the previous owner of the "dangerous dog or cat" designation.
3. The new owner must also adhere to "dangerous dog or cat" regulations and fees.

K. Proceedings for Disposition of Certain Dogs or Cats.

1. Generally. The Council is authorized to order destruction or other disposition of the following:
 - a) Any dog or cat that habitually destroys property or habitually trespasses in a damaging manner on property of persons other than the owner; or
 - b) Any dangerous dog or cat; or
 - c) Any animal that habitually barks, cries, whimpers, howls, whines, or emits any other loud or unusual noises.

In the event that the Council waives its authority under this Subdivision, a sworn complaint of any person that any one of the foregoing facts exist may be brought before a District Court Judge in this County. Said Judge shall issue a

summons directed to the owner or person having possession of said animal commanding such person to appear before said Judge to show cause why said animal should not be seized and killed or otherwise disposed of by the pound master, or any police officer or animal warden.

Such summons shall be returnable not more than five (5) days from the date thereof and shall be served at least three (3) days before the time of appearance mentioned therein. Upon such hearing and finding of the facts true as complained of, the Judge may either order the animal killed or order the owner to remove it from the City or may order it confined to a designated place, or may order its sale or other disposition as herein provided for the impounded animal. Upon sworn complaint to the district court that any one of the following facts exist:

- d. That any dog or cat at any time has destroyed property or habitually trespasses in a damaging manner on the property of person other than the owner; or
- e. That any dog or cat at any time has attacked or bitten a person outside the owner's or custodian's premises; or
- f. That any dog or cat is vicious or shows vicious habits or molests pedestrians or interferes with vehicles on the public streets; or
- g. That any dog or cat is a public nuisance as heretofore defined;

the judge shall issue a summons directed to the owner of the dog or cat commanding him to appear before the court to show cause why the dog or cat should not be seized by any police officer, or otherwise disposed of in the manner authorized in this part. Such summons shall be returnable not less than two or more than six days from the date thereof and shall be served at least two days before the time of the scheduled appearance. Upon such hearing and finding the facts true as complained of, the court may either order the dog or cat killed, or order the owner or custodian to remove it from the City, or may order the owner or custodian to keep it confined to a designated place. If the owner or custodian violates such order, any police officer may impound the dog or cat described in such order. The provisions of this section are in addition to and supplemental to other provisions of this part.

Costs of the proceeding specified by this section shall be assessed against the owner or custodian of the dog or cat, if the complainant prevails; or to the complainant, if the owner prevails.

2. Notice and Hearing. The Council, after having been advised of the existence of such animal as defined in this Subdivision and having decided to retain its authority under this Section, shall proceed as follows:
 - a. The owner of the offending animal shall be notified in writing as to the reasons the animal is subjected to disposition under this Subdivision and where applicable, the dates, times, & places of animals and persons bitten, attacked, injured or disfigured, or of other violations, and shall be given ten (10) days to request a hearing in writing for determination as to the disposition of the animal. If the owner does not request a hearing within ten 10 days of the notice, the Council shall make an appropriate order including destruction or other property disposition of the animal. The owner shall immediately make the animal available to the animal control officer for the ordered disposition.
 - b. If the owner requests a hearing in writing for the determination as to the disposition of the animal, the hearing shall be held before the Council at a date not more than four (4) weeks after demand for the hearing. The records of the animal control officer shall be admissible for the consideration without further foundation. After considering all evidence, the Council shall make an appropriate order within thirty (30) days of hearing, including destruction or other property disposition of the animal. The owner shall immediately make the animal available to the animal control officer for the ordered disposition.
 - c. The Council may apply to the District Court of Otter Tail County for Subpoenas for hearing under Item 2, above.
3. Concealing of Animals. It is unlawful for any person to harbor, hide or conceal an animal which has been ordered into custody for destruction or other property disposition.
4. Immobilization of Dogs or Cats. For the purpose of enforcement of this Section, any peace officer, animal control officer, or other person assisting a police officer or animal control officer, may use a tranquilizer gun or other instrument for the purpose of immobilizing or seizing, impounding, or restraining any animal believed to be in violation of this Section.

503.08 RABIES CONTROL.

- A. **Inoculation.** Any owner of a dog(s) or cat(s) over six (6) months of age must have such dog(s) or cat(s) inoculated against rabies in accordance with this subdivision and possess a certificate of rabies vaccination issued by a veterinarian duly licensed to practice veterinary medicine within the State of Minnesota. Such certificate shall state that the dog or cat has a current inoculation against rabies with a Federally

licensed rabies vaccine, and shall be revaccinated at an interval of no more than 36 months.

B. Muzzling Proclamation. Whenever the prevalence of rabies renders such action necessary to protect the public health and safety, the Council shall issue a proclamation ordering every person owning or keeping a dog or cat to muzzle it securely or restrain it so that it cannot bite. No person shall violate such proclamation and any muzzled dog or cat unrestrained during the time fixed in the proclamation shall be subject to impoundment as heretofore provided, and the owner of such dog or cat shall be subject to the penalty hereinafter provided.

C. Animal Bites.

1. Persons Bitten.

- a. Whenever any dog or cat has bitten a person, the owner must:
 - 1) provide a certificate of current rabies inoculation; and
 - 2) immediately quarantine the dog or cat at the owner's home or other suitable place of confinement as directed by the responsible officer of the City for a period of ten (10) days after the occurrence.
- b. During the quarantine, the dog or cat shall be securely confined in a building, locked kennel or a yard which is enclosed by a fence not less than five (5) feet high and so constructed that the animal cannot escape or otherwise leave the enclosure, and which will not permit other animals or persons to enter, for the purpose of preventing the animal from biting or otherwise coming into contact with persons or other animals.
- c. If the dog or cat dies or shows signs of illness or if it escapes, the animal control officer or Police Department must be notified immediately. The confinement, testing and treatment costs, in addition to all other expenses incurred as the result of a dog or cat biting a person, shall be at the expense of the owner of the biting animal.
- d. In the event that a certificate of current rabies inoculation is not provided or upon a reasonable suspicion that the dog or cat may be rabid, the dog or cat shall be immediately seized and subjected to the necessary tests by a doctor of veterinary medicine for the purpose of determining if it is infected with rabies. Any animal, other than a dog or cat, which has bitten a person may be destroyed and taken to the Minnesota Department of Health, Division of Public Health Laboratories to be determined if the animal has been infected with rabies.

2. Dog or Cat Bitten.
 - a. Whenever any rabid-bearing animal has bitten a dog or cat, the owner of the bitten dog or cat, having been so notified, either orally or in writing, must:
 - (1) provide a certificate of current inoculation to the Police Department; and
 - (2) immediately revaccinate the dog or cat; and
 - (3) immediately quarantine the dog or cat at the owner's home or other suitable place of confinement as directed by the responsible officer of the City for a period of 180 days. The dog or cat may be released from quarantine after forty (40) days if the following are satisfied:
 - (i) The dog or cat was vaccinated for rabies at least 21 days before exposure; and
 - (ii) The dog or cat was revaccinated for rabies immediately after exposure at which time the 40day period shall begin; and
 - (iii) A written report as required by State law is received by the Board of Animal Health.
3. Any quarantine of a dog or cat under this Subdivision shall be in accordance with Item 1, (b) of Subdivision C.
4. If the dog or cat dies or shows signs of illness or escapes, the animal control officer or Police Department must be notified immediately. The confinement, testing, and treatment costs, in addition to all other expenses incurred as the result of a dog or cat bitten by another animal shall be at the expense of the owner of the dog or cat bitten.
5. In the event that a certificate of current rabies inoculation is not provided, or the owner of the dog or cat bitten fails to comply with the provisions herein, or upon a reasonable suspicion that the dog or cat may be rabid, the dog or cat shall be immediately seized and subjected to the necessary tests by a doctor of veterinary medicine for the purpose of determining if it is infected with rabies and shall be quarantined as provided in Item 1, (b) of Subdivision C.
6. Any animal other than a dog or cat, which has bitten a dog or cat shall be destroyed and taken to the Minnesota Department of Health, Division of Public Health laboratories to be determined if the animal has been infected with rabies.

503.09 NUMBER OF ANIMALS RESTRICTED. The number of licensed animals permitted shall not exceed four (4) per dwelling unit. Any existing dwelling which becomes nonconforming on the effective date of this Section shall not have the number of permitted animals enlarged, but may continue with the existing animals until the death of the animals in excess of the permitted number.

503.10 WILD ANIMAL REGULATION.

- A. Purpose. This section is adopted for the purpose of protecting the health, safety, and welfare of the residents of the City.
- B. Definition. For the purposes of this Section, the term "wild animal" means and includes any animal, not of the traditional domesticated species, which is inherently dangerous and presents a potential risk to the public.
- C. Running at Large Prohibited. It is unlawful for the owners of any wild animal to permit such animal to run at large. Any animal shall be deemed to be running at large with the permission of the owner unless it is effectively confined within a motor vehicle, building, or enclosure.
- D. Permit Required. It is unlawful for any person to keep, shelter, or harbor any wild animal without a permit therefore from the City.
- E. Permit Term and Fees. All permits shall be issued for a term of two (2) years and the fee for such permits shall be fixed and determined by the Council, adopted by consolidated ordinance and uniformly enforced. Such fee may from time to time, be amended by the Council.
- F. Conditions of Permit. No permit for the keeping of wild animals shall be issued until the applicant has met the following criteria for the keeping and housing of wild animals:
 - 1. A plan is approved by the Council which establishes the nature and size of the cage or enclosure to house the animal considering the animal's size, weight, strength, and relative danger to the public; specifying all protective devices to be maintained to restrain the animal and discourage tampering by humans and other animals; providing for suitable exercise facilities; and an emergency response plan to be on file with the City; and
 - 2. Erection and maintenance of suitable fencing for the protection of adjoining property owners and the general public; and
 - 3. Providing suitable sanitation controls so as not to create a public or private nuisance; and
 - 4. Proof of insurance for medical expense and liability.

- a) Inspection. Prior to the issuance of the permit, the City shall require an inspection be made to determine that the facilities are suitable for the protection of the health, safety, and welfare of the public. Such inspection shall be made by a person approved by the City and the cost of such inspection shall be borne by the applicant.

- b) Suspension or Revocation of Permit. The Council may, for any violation or other reasonable cause:
 - (1) Refuse to grant any renewal application; or
 - (2) Suspend for a period of sixty (60) days; or
 - (3) Revoke any permit issued under this Section. Such action shall be made only upon a finding that the permittee has failed to comply with the provisions of this Section. The Council shall take such immediate action as it deems necessary for the public protection to remedy any potentially dangerous situation. The owner of such animal shall be responsible for any expense incurred as the result of such action. Before revocation of any permit, the Council shall give notice to the permittee and grant such permittee opportunity to be heard. The permittee shall have thirty (30) days following a revocation hearing to correct any violations of this Section found to be the basis for revocation, during which time period the revocation shall be suspended.

503.11 IMPOUNDING

Subdivision 1. Police to Impound. Any dog or cat found unlicensed or running at large contrary to the provisions of this ordinance may be impounded by the pound master or any police officer, who shall give notice of the impounding to the owner of such dog or cat if known. If the owner is unknown, the officer shall post notice at the Pound and two of the City's posting sites. If the dog or cat is not claimed within five days of the posting of the notice, it will be disposed of per Section 503.11, Subdivision 3.

Subdivision 2. Redemption. Any dog or cat may be redeemed from the pound by the owner within the time stated in the notice by the payment to the Clerk of the license fee for the current year, if unpaid, and boarding fee together with an impounding fee of \$25.00 for the first offense, \$50.00 for the second offense, \$100.00 for the third offense. The City Council may by resolution change these fees.

Subdivision 3. Disposition of Unclaimed Dogs or Cats. Any dog or cat that is not claimed by the owner shall be humanely killed and disposed of by the Pound Master or at his discretion.

PART 4. OTHER ANIMALS

504.01 GENERAL PROHIBITION

No person shall keep any horse, cattle, pig, sheep, goat, large farm animal, or exotic animals in the City or permit such animal to be kept on premises owned, occupied, or controlled by him except under the condition prescribed by this chapter.

ANIMALS AND FOWL - KEEPING, TRANSPORTING, TREATMENT, HOUSING.

Subdivision 1. Definitions. As used in this Section, the following definitions shall apply.

- A. "Farm Animals" - Cattle, horses, mules, donkeys, sheep, goats, swine, ponies, ducks, geese, turkeys, chickens, rabbits, guinea hens and honey bees.
- B. "Animals" -- Included farm animals and all other animals, reptiles, and feathered birds or fowl, except fowl defined herein in this City Code as "Racing Pigeons" or "Fancy Pigeons" or "Sporting Pigeons", and also, except dogs, cats, gerbils, hamsters and caged household birds. Any reference made to "fowl" in this City Code shall not apply to fowl defined herein in this City Code as "Racing Pigeons", "Fancy Pigeons" or "Sporting Pigeons".

Subdivision 2. Keeping. It is unlawful for any person to keep or harbor any animal, not in transit, except:

- A. Farm animals kept in that portion of the City zoned for agricultural purposes, or,
- B. Animals kept as part of a show licensed under the City Code, or,
- C. Animals used in a parade for which a permit has been issued, or,
- D. Animals kept in a laboratory for scientific or experimental purposes, or,
- E. Animals kept in an animal hospital or clinic for treatment by a licensed veterinarian.

Subdivision 3. Manner of Keeping. No person shall keep any dog, cat, or other animal in the City in an unsanitary place or condition or in a manner resulting in objectionable odors or in such a way as to constitute a nuisance or disturbance by reason of barking, howling, fighting, or other noise or in such a way as to permit the animal to annoy, injure, or endanger any person or property.

Subdivision 4. Animals in Transit. It is unlawful for any person to transport animals unless they are:

- A. Confined within a vehicle, cage or other means of conveyance, or

- B. Farm animals being transported in a portion of the City zoned for agricultural purposes, or
- C. Restrained by means of bridles, halters, ropes, or other means of individual restraint.

Subdivision 5. Treatment. It is unlawful for any person to treat any animal as herein defined, or any other animal, in a cruel or inhumane manner.

Subdivision 6. Housing. It is unlawful for any person to keep any animal as herein defined, or any other animal, in any structure infested by rodents, vermin, flies, or insects, or inadequate for protection against the elements, as defined in Minn. Stat. Section 343.40.

Subdivision 7. Trespasses. It is unlawful for any person to herd, drive or ride any animal over and upon any grass, turf, boulevard, City park, cemetery, garden, or lot without specific permission therefore from the owner.

Subdivision 8. Diseased Animals. Any animal with a contagious disease shall be so confined that it cannot come within fifty (50) feet of any public roadway or any place where animals belonging to or harbored by another person are kept.

504.02 AREAS WHERE KEEPING PROHIBITED

No horse, cattle, pig, sheep, goat, chicken, duck, gees, or other fowl, or any other farm animal typically identified as a farm animal, excluding dogs, cats, and excluding fowl defined herein in this City Code as “Racing Pigeons” or “Fancy Pigeons” or “Sporting Pigeons”, shall be kept in the City except within the agricultural zone.

504.03 TREATMENT

No person shall treat any animal in a cruel or inhumane manner.

504.04 ANIMALS AT LARGE

No person shall permit any animal of which he is the owner, caretaker, or custodian to be at large within the City. Any such animal is deemed to be at large when it is off the premises owned or rented by the owner or his agent and not under his individual physical restraint.

504.05 CARE OF PREMISES

Subdivision 1. Clean Shelters. Every structure and yard in which animals or fowl are kept shall be maintained in a clean and sanitary condition and free of all rodent, vermin and objectionable odors. Upon the complaint of any individual or otherwise, a City official shall inspect such structure or yard and issue any such order as may be reasonably necessary to carry out the provisions of Part 4.

Subdivision 2. Manure. Manure shall be removed with sufficient frequency to avoid nuisance

from odors or from the breeding of flies, at least once per month from October 1 to May 1 each year and once every two weeks at other times. Unless used for fertilizer, manure shall be removed by hauling beyond the City limits. If used for fertilizer, manure shall be spread upon the ground evenly and turned under at once or as soon as the frost leaves the ground.

504.06 IMPOUNDING (OTHER THAN DOGS OR CATS)

Subdivision 1. Who Impounds. The pound master or any police officer may take up and impound in the City pound any animal of fowl running at large in violation of this chapter and shall provide sustenance for every animal impounded. Such animal may be delivered to a third party for impoundment.

Subdivision 2. Notice. Within 24 hours after any animal has been impounded, the pound master shall post notices in three conspicuous places in the City, one of them at the pound, describing the animal and stating that it has been impounded. He shall also make a reasonable attempt to give oral or written notice to the owner where known.

Subdivision 3. Release. No animal impounded shall be released except to a person displaying a receipt from the Clerk showing payment of the impounding fee and boarding fees.

Subdivision 4. Redemption. Any animal may be redeemed from the pound by the owner within the time stated in the notice by the payment to the Clerk for the current boarding fees together with an impounding fee of \$25.00 for the first offense, \$50.00 for the second offense, \$100.00 for the third offense. The City Council may by resolution change these fees.

Subdivision 5. Disposition. Any animal which is not claimed within the five-day period, as defined herein, must be made available to any licensed institution which has requested the animal as required by Minn. Stat. Section 35.71. If a tag affixed to the animal, or by a statement by the animal's owner after the animal's seizure specifies that the animal may not be used for research, the animal must not be made available to any such institution and may, at the discretion of the pound, be given or sold to anyone desiring the animal or be destroyed in a proper and humane manner after the expiration of the five-day period.

504.07 PENALTIES

Subdivision 1. Administrative Penalty. The City of Pelican Rapids has the right to penalize violations of this Animal Control Ordinance as defined in Chapter 1, Section 100.06 of City Code. The Administrative Penalty process is intended to provide the public and the City with a cost effective and expeditious alternative to traditional criminal charges for violations of certain ordinance provisions.

504.08 IMPOUNDING

Subdivision 1. Who Impounds. The poundmaster or any police officer may take up and impound in the City pound any animal or fowl running at large in violation of this chapter and

shall provide sustenance for every animal impounded. Such animal may be delivered to a third party for impoundment.

Subdivision 2. Notice. Within 24 hours after any animal has been impounded, the poundmaster shall post notices in three conspicuous places in the City, one of them at the pound, describing the animal and stating that it has been impounded. He shall also make a reasonable attempt to give oral or written notice to the owner where known.

Subdivision 3. Release. No animal impounded shall be released except to a person displaying a receipt from the Clerk showing payment of the impounding fee or the sale price.

Subdivision 4. Fees. The fee for impounding shall be the normal and reasonable charges made by the person to whom the animal is delivered for impounding.

Subdivision 5. Sale. If any impounded animal is not redeemed within six days, the poundmaster shall give an additional three-day posted notice, as provided in Subdivision 2, of the time and place when and where the animal shall be sold. If the poundmaster is unable to sell the animal on the day stated, he may sell the animal as soon thereafter as possible without further notice.

Subdivision 6. Proceeds of Sale. The Clerk shall turn over the proceeds of such sale to the treasurer. The treasurer shall pay the poundmaster the costs of impounding. The balance shall be paid, on order of the Council, to the owner of the animal or fowl if claimed within one year from the date of sale; otherwise it shall be forfeited to the City.

Subdivision 7. Illegal Release. No unauthorized person shall break into the pound or release any animal legally placed therein.

504.09 KEEPING OF PIGEONS

Subdivision 1. Title. Ordinance authorizing the keeping of racing pigeons, fancy pigeons and sporting pigeons, and providing the issuance of licenses and providing for violations.

Subdivision 2. Intent and Purpose. It is the purpose and intent of this ordinance to permit the keeping, maintenance and flying of certain registered pigeons as a recreational sport and hobby, subject to regulations hereafter set forth. The keeping, breeding, maintenance and flying of racing pigeons, fancy pigeons and sporting pigeons, as defined herein, is determined not to be a nuisance and is not detrimental to the public welfare, if regulated as hereafter set forth.

It is recognized that the keeping, breeding, maintenance and flying of such racing pigeons, fancy pigeons and sporting pigeons is now mainly engaged in by members of local, district and national organizations, and such persons keep their racing pigeons in suitable permanent structures constructed and maintained for such purpose, and keep such structures in a clean and sanitary manner, and do not permit their pigeons to remain at large in the community in such manner as to disturb their neighbors or to prevent the full enjoyment of property rights by their neighbors.

Subdivision 3. Definitions:

- A. "Racing Pigeon" means a pigeon, which, through selective past breeding, has developed the distinctive physical and mental characteristics as to enable it to return to its home after having been released a considered distance therefrom, and which is accepted as such by the American Racing Pigeon Union, Inc. or the International Federation of Racing Pigeon Fanciers. Also, commonly known as Racing Homer, Homing Pigeon, or Carrier Pigeon.
- B. "Fancy Pigeon" means a pigeon which, through past breeding, has developed certain distinctive physical and performing characteristics as to be clearly identified and accepted as such by the National Pigeon Association, the American Pigeon Club, or the Rare Breeds Pigeon Club. Examples: Fantails, Pouters, Trumpeters.
- C. "Sporting Pigeon" means a pigeon which, through selective past breeding, has developed the ability to fly in a distinctive manner, such as aerial acrobatics or endurance flying. Examples: Rollers, Tipplers.
- D. "Loft" means the structure(s) for the keeping or housing of pigeons permitted by this ordinance.
- E. "Mature Pigeon" means a pigeon aged six months or older.
- F. "Owner" means the owner of Pigeons subject to this ordinance.
- G. Any reference to pigeon(s) in the City Code shall be interpreted to mean only racing pigeons, fancy pigeons and sporting pigeons as defined above.
- H. "Animals" – Included farm animals and all other animals, reptiles, and feathered birds or fowl, except fowl defined herein in this City Code as "Racing Pigeons", "Fancy Pigeons" and "Sporting Pigeons", and also, except dogs, cats, gerbils, hamsters and caged household birds. Any reference made to "fowl" in this City Code shall not apply to fowl defined herein in this City Code as "Racing Pigeons", "Fancy Pigeons" or "Sporting Pigeons".

Subdivision 4. Conditions:

The keeping, breeding, maintenance and flying of pigeons shall be permitted on the following conditions:

- A. The loft shall be of such sufficient size and design, and constructed of such material, that it can be maintained in a clean and sanitary condition.
- B. There shall be at least one (1) square foot of floor space in any loft for each mature pigeon kept therein.
- C. The construction and location of the loft shall not conflict with the requirements of any Building Code or Zoning Code of the City.
- D. All feed for said pigeons shall be stored in such containers as to protect against intrusion by rodents and other vermin.
- E. The loft shall be maintained in a sanitary condition and in compliance with all applicable health regulations of the City of Pelican Rapids, County of Otter Tail, and State of Minnesota.

- F. All pigeons shall be confined to the loft, except for limited periods necessary for exercise, training and competition; and at no time shall pigeons be allowed to perch or linger on the buildings or property of others.
- G. All pigeons shall be fed within the confines of the loft.
- H. No one shall release pigeons to fly for exercise, training or competition except in compliance with the following rules:
 - 1. The owner of the pigeons must be a member in good standing of an organized pigeon club, such as the American Racing Pigeon Union, Inc., the International Federation of Racing Pigeon Fanciers, the National Pigeon Association, the American Tippler Society, the International Roller Association, the Rare Breeds Pigeon Club, or a local club that has rules that will help preserve the peace and tranquility of the neighborhood.
 - 2. Pigeons will not be released for flying which have been fed within the previous 4 hours.
- I. Pigeons shall be banded and registered with one of the national pigeon associations/registries.
- J. Pigeon lofts shall be located in the rear yard only and shall be at least 50 feet from adjacent habitable structures and 5 feet from all property lines. If a 50-foot setback from adjacent habitable structures cannot be achieved, the property owner may seek the written consent of the affected property owner(s) for a lesser amount. Inability to obtain the written consent of the affected property owner may be appealed by applying for a formal variance pursuant to City Code. Portable coops and runs are allowed, but allowable locations must be identified on the required site plan.
- K. No one shall release pigeons to fly for exercise, training or competition except owner(s) of pigeons who are member(s) in good standing of an organized pigeon club, such as the American Racing Pigeon Union, Inc., the International Federation of Racing Pigeon Fanciers, the National Pigeon Association, the American Tippler Society, the International Roller Association, the Rare Breeds Pigeon Club, or a local club which has rules that will help preserve the peace and tranquility of the neighborhood.
- L. In no case shall the number of pigeons exceed 100.
- M. Keeping of pigeons is limited to single-family and two-family residential properties only.
- N. Dead birds must be disposed of according to the Minnesota Board of Animal Health rules which require carcasses to be disposed of as soon as possible after death, or within 48 hours to 72 hours. Legal forms of carcass disposal include burial, or off-site incineration, off-site rendering or off-site composting.
- O. Issuance of a permit does not create a vested zoning right; failure to comply with these conditions is a violation of this ordinance and may result in the suspension or revocation of the approval to keep pigeons. Approval to keep may be revoked following written notice of a hearing to allow the applicant the opportunity to appeal the action to the City Council. If approval is revoked, the owner shall remove the birds from the property within 15 days of the revocation and remove the loft within 30 days.
- P. A permit sticker issued by the City to the applicant must be displayed on the loft in a manner easily visible for inspection.

Subdivision 5. Application for Permit:

- A. Applicant shall obtain a permit prior to keeping any pigeons. The application shall be accompanied by a site plan showing the location and size of the premises and location, size and design of the loft. The application shall specify the maximum number (not to exceed 100) of pigeons to be kept on the premises at one time, and the applicant shall sign an agreement pledging to abide by the provisions of this ordinance and to allow the premises to be inspected by the City at all reasonable times so as to assure compliance with the conditions outlined in Subdivision 4 above. Renters of single-family and two-family residential properties must provide written evidence of the property owner's consent, said the sufficiency and adequacy of said written evidence shall be determined by the City.
- B. Number of Birds: The permit shall state the number of pigeons which may be maintained on the premises (not to exceed 100). The permittee shall immediately inform the City in writing when the number of pigeons maintained on the premises exceeds the number allowed by the permit. In no case shall the number of pigeons exceed that which is permitted by this code. The permit may be denied or revoked if the City objects to the proposed number of pigeons or if the owner(s) or property is found to be in violation of this code.
- C. Structure Design (Loft): Lofts shall not exceed 6 feet in height or 30 square feet in size as measured at the base of the structure. The structures must be completed with exterior finish materials that must be approved by the City. The City shall have the absolute authority to use its discretion to determine the number of lofts that are situated on the property.
- D. On application signed by the owner, on such form as shall be provided by the City, wherein the owner shall certify that said owner's loft(s) comply with applicable building, and zoning codes, and upon payment of an annual fee of \$10.00, a permit shall be issued to the owner, which shall remain in full force and effect unless suspended or revoked, or unless the use of the loft is discontinued for a period of one year.

Subdivision 6. Right of Entry for Inspection: The City's agents and employees and staff may enter and inspect any property containing a loft at any reasonable time for the purpose of investigating either an actual or suspected violation or to ascertain compliance or noncompliance with this ordinance.

Subdivision 7. Violation and Penalties: When any City's agent, employee or staff member finds a violation to have occurred, said City's agent, employee or staff members shall give written notice thereof to the owner(s). If said violation is not remedied within ten (10) days, the City's agent, employee or staff member may issue a citation to appear in district court to answer the charges stated thereon. Any owner found violating any of the provisions of this ordinance shall upon conviction be guilty of a misdemeanor punishable by a fine.

PART 5. TOBACCO

505.01. PURPOSE

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both State and Federal laws; and because studies have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 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 Part 5 is intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, 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 Minn. Stat. §144.391.

505.02. 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:

Subdivision 1. Tobacco or Tobacco Products. "Tobacco" or "Tobacco products" shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; pipe tobacco; snuff, fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.

Subdivision 2. Tobacco Related Devices.

"Tobacco related devices" shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

Subdivision 3. Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, without the assistance or intervention of the licensee or the licensee's employee, the assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subdivision 4. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco related device.

Subdivision 5. Individually packaged. "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 packs 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.

Subdivision 6. Loosies. "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette.

Subdivision 7. Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subdivision 8. Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

Subdivision 9. Moveable Place of Business. "Moveable 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 authorized for sales transactions.

Subdivision. 10 Sale. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subdivision 11. Compliance Checks. "Compliance Checks" shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance Checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco related devices 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 relating to tobacco, tobacco products, and tobacco related devices.

505.03. LICENSE.

No person shall sell or offer to sell any tobacco, tobacco products, or tobacco related device without first having obtained a license to do so from the city.

Subdivision 1. Application. An application for a license to sell tobacco, tobacco products, or tobacco related devices 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. Upon receipt of a completed application, the city clerk shall forward the application to the council for action at its next regularly scheduled council meeting. If the clerk shall determine 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.

Subdivision 2. Action. The council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the council shall approve the license, the clerk shall issue the license to the applicant. If the 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 council's decision.

Subdivision 3. Term. All licenses issued under this ordinance shall be valid until December 31 in the year of issue and annually thereafter.

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

Subdivision 5. Transfers. All licenses issued under this ordinance 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 council.

Subdivision 6. Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this Part 5.

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

Subdivision 8. Renewals. The renewal of a license issued under this Part 5 shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but no more than sixty (60) days before the expiration of the current license. The issuance of a license issued under this Part 5 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.

505.04. FEES.

No license shall be issued under this Part 5 until the appropriate license fee shall be paid in full. The annual fee for a license under this Part 5 shall be \$25.00, which may be amended from time to time by council resolution.

505.05. BASIS FOR DENIAL OF LICENSE.

The following shall be grounds for denying the issuance or renewal of a license under this Part 5; 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.

- A. The applicant is under the age of 18 years.
- B. The applicant has been convicted within the past five years of any violation of a Federal, State, or local law, City Code provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices.
- C. The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices revoked within twelve months prior to the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by Federal, State, or other local law, City Code provision, or other regulation, from holding such a license.

505.06. PROHIBITED SALES.

It shall be a violation of this Part 5 for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related device:

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine, except as may otherwise be provided in this Part 5.
- C. 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 premise in order to receive the tobacco, tobacco product, or tobacco related device and whereby there is not a physical "exchange of the tobacco, tobacco product, or tobacco related device between the licensee or the licensee's employee, and the customer.
- D. By means of loosies as defined in this Part 5.
- E. 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.
- F. By any other means, to any other person, on in any other manner or form prohibited by Federal, State, or other local law, City Code provision, or other regulation.

505.07 VENDING MACHINES.

It shall be unlawful for any person licensed under this Part 5 to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

505.08. SELF-SERVICE SALES.

It shall be unlawful for a licensee under this Part 5 to allow the sale of tobacco, tobacco products, or tobacco related devices by any means where by the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, and tobacco related devices shall either be stored behind a 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 products, or tobacco related devices at the time this Part 5 is adopted shall comply with this Section within 60 days following the effective date of this Part 5.

505.09. SIGNAGE.

Licensees shall post signs indicating that it is illegal to sell tobacco, tobacco products, and tobacco related devices to anyone under the age of 18 years, and that the possession and use of such items by minors is also illegal under both State law and the Pelican Rapids City Code. Such signs shall be provided by the City to each licensee, and be placed in a location at each point of purchase that is clearly visible to each customer making a purchase of tobacco, tobacco products, and tobacco related devices, said location to be within three feet of the customer when said purchase is made.

505.10. RESPONSIBILITY.

All licensees under this Part 5 shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibition the City from also subjecting the clerk to whatever penalties are appropriate under this Part 5, State or Federal law, or other applicable law or regulation.

505.11. COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time , but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall

not be guilty of unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained as a 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 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 for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

505.12. OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this Part 5.

Subdivision 1. Illegal Sales. It shall be a violation of this Part 5 for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor,

Subdivision 2. Illegal Possession. It shall be a violation of this Part 5 for any minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subdivision 3. Illegal Use. It shall be a violation of this Part 5 for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.

Subdivision 4. Illegal Procurement. It shall be a violation of this Part 5 for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this Part 5 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 product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subdivision 5. Use of False Identification. It shall be a violation of this Part 5 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 person has been modified or tampered with to represent an age older than the actual age of the person.

505.13. VIOLATIONS.

Subdivision 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 violation of his or her right to be heard on the accusation.

Subdivision 2. Hearings. If a person accused of violating this Part 5 so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Subdivision 3. Hearing Officer. The City Council shall serve as the hearing officer.

Subdivision 4. Decision. If the hearing officer determines that a violation of this Part 5 did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under this Part 5, shall be recorded in writing a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subdivision 5. Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred.

Subdivision 6. Misdemeanor Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Part 5. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

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

505.14. PENALTIES.

Subdivision 1. Licensees and Employees. Any licensee, and any employee of a licensee, found to have violated this Part 5 shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

Subdivision 2. Other Individuals. Other individuals, other than minors regulated by subdivision 3 of this Subsection, found to be in violation of this Part 5 shall be charged an administrative fee of \$50.

Subdivision 3. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related device shall be subject to appropriate penalties. Such penalties shall be established from time to time by City Council resolution after consultation with interested educators, parents, children, and representatives of the court system. The Council shall consider a variety of options including, but not limited to, tobacco free education programs, notice to schools, parents, community service, and other court diversion programs.

Subdivision 4. Misdemeanor. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this Part 5.

505.15. EXCEPTIONS AND DEFENSES.

Nothing in this Part 5 shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this Part 5 for a person to have reasonably relied on proof of age as described by State law.

505.16. SEVERABILITY AND SAVINGS CLAUSE. If any section or portion of this Part 5 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 Part 5.

505.17. EFFECTIVE DATE. This Part 5 shall take effect the day following publication in the city' s official newspaper.

PART 6. GAMBLING

506.01 PURPOSE

The purpose of this Part is to closely regulate and control the conduct of gambling.

506.02 PROVISIONS OF STATE LAW ADOPTED

The provisions of Minnesota Statutes, Chapter 349, and Laws of Minnesota, 1978, Chapter 507, as amended relating to the definition of terms, licensing and restrictions of gambling are adopted and made a part of this ordinance as if set out in full.

506.03 LICENSE REQUIREMENT

No person shall directly or indirectly operate a gambling device without a license to do so as provided in this Part.

506.04 PERSONS ELIGIBLE FOR A LICENSE

A license shall be issued only to fraternal, religious, and veterans organizations, or any corporation, trust or association organized for exclusively scientific, literary, charitable, educational or artistic purposes, or any club which is organized and operated exclusively for pleasure, recreation, or other non- profitable purposes, no part of the net income of which inures to the benefit of any private member, stockholder or individual. Such organization must have been in existence for at least three years and shall have at least 15 active members.

506.05 LICENSE FEES

Subdivision 1. Fees. The annual fee for a paddle wheel, tip board or pull-tab (ticket jar) license shall be established from time to time by the resolution of the City Council.

Subdivision 2. Application Procedure. Application for a license shall be made upon a form prescribed by the council or clerk, and shall include a duplicate copy of the application made to the State Charitable Gambling Control Board. No person shall make a false representation in an application. The council shall act upon said application within 180 days from the date of application, but shall not issue a license until at least 30 days after the date of application.

506.06 TERM

Licenses issued pursuant to this ordinance shall be valid for one year, unless a shorter time is specified by the council at the time of issuance.

506.07 PROFITS

Profits from the operation of gambling devices or the conduct of raffles shall be used for lawful purposes only.

506.08 CONDUCT OF GAMBLING

The conduct of all gambling activities shall be in accordance with applicable State laws and regulations and more stringent local regulations established under this ordinance.

506.09 REPORTING REQUIREMENTS

All reports of each organization licensed to operate gambling devices which are filed with the State Charitable Gambling Control Board shall be filed in duplicate with the city clerk.

506.10 ELIGIBLE PREMISES

Gambling devices shall be operated and raffles conducted by a licensed organization only upon premises which it owns or leases. Leases shall be in writing and shall be for a term of at least one year. No lease shall provide that rental payments be based on a percentage of receipts. A copy of the lease shall be filed with the city clerk upon request.

506.11 CONDITIONS OF LICENSE

Subdivision 1. General Conditions. Every license shall be granted subject to the conditions in the following subdivisions and all other provisions of this ordinance and of any other applicable ordinance of the city or state law.

Subdivision 2. Use of Gambling Device by Minor. The licensee shall allow no minor to use any gambling device unless accompanied by his parent or legal guardian.

Subdivision 3. Outdoor Advertising. No licensee shall display any sign or advertisement visible from outside the building which contains the licensed premises and which indicates that a gambling device is available on the premises, except as otherwise specifically permitted in the license.

Subdivision 4. Searches and Seizures. Any peace officer may enter, inspect and search the premises of a licensee during hours of operation without a search and seizure warrant and may seize all unpermitted gambling devices found on the licensed premises in violation of the license.

506.12 SPECIAL RULES FOR OPERATING A GAMBLING DEVICE

Either at the time of application, or at any time thereafter, the City Council shall have the right to impose reasonable rules and restrictions on the operation of a gambling device by the licensee, including, but not limited to, the following:

Subdivision 1. Location. Rules restricting the operation of a gambling device to a certain area or areas of the licensed premises.

Subdivision 2. Time. Rules restricting the hours during which a gambling device may be operated by the licensee.

506.13 PENALTIES

Subdivision 1. Criminal Penalty. Violation of any provision of this ordinance shall be a misdemeanor.

Subdivision 2. Temporary Suspension. In cases where probable cause exists as to an ordinance violation, the City may temporarily suspend a license upon service of notice of the hearing provided for in Subdivision 3. Such temporary suspension shall not extend more than two weeks.

Subdivision 3. Procedure. A license shall not be revoked under Subdivision 2 until notice and an opportunity for a hearing have first been given to the licensee. The notice shall be personally served and shall state the ordinance provision reasonably believed to be violated. The notice shall also state that the licensee may demand a hearing on the matter, in which case the license will not be suspended until after the hearing is held. If the licensee requests a hearing, one shall be held on the matter by the City Council at least one week after the date on which the request is made. If, as a result of the hearing, the City Council finds that an ordinance violation exists, then the Council may suspend or revoke the license.

PART 7. RECREATIONAL GAMES

507.01 DEFINITIONS

Subdivision 1. Person. “Person” shall mean, in addition to its ordinary meaning, any partnership, limited partnership or corporation.

Subdivision 2. Licensee. “Licensee” shall mean any person who owns or leases any recreational game, as hereinafter described, on the person’s premises, whether said premises are

owned or leased by said person; said licensee shall be that person who exercises primary dominion and control over the operation of said recreational games on the premises where said games are located.

Subdivision 3. Licensor. “Licensor” shall mean the City Council of the City of Pelican Rapids, Minnesota.

Subdivision 4. Recreational Game. “Recreational Game” shall include individual billiard or pool tables, whether coin operated or not, individual bowling lanes or alleys, other such games, coin operated, non-coin operated, electronic, non-electronic, which is not a contrivance which for a consideration affords the player an opportunity to obtain something of value, other than free play, automatically from the machine, game or otherwise, the award of which is determined principally by chance, which games are maintained for purposes of business profit, directly or indirectly.

Subdivision 5. Public Nuisance. “Public Nuisance” shall mean the maintenance of a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of members of the public.

507.02 LICENSING

It is deemed in the best interests of the health, safety and general welfare of the City to control, regulate and limit the use of recreational games through a system of licensing, and subject to this system of licensing, recreational games are permitted, to-wit:

Subdivision 1. License Required. Each recreational game in operation in this City shall require a license therefor, and application for said license shall be made to the City Council and filed with the Clerk on blank forms prepared and furnished by the Council enabling the Council to grant or refuse said application. Said application shall be accompanied by the license fee hereinafter specified.

Subdivision 2. License Fee. The license fee for each such recreational game sought to be licensed shall be Five Dollars (\$5) per year payable in advance. This fee may be changed by resolution of the City Council.

Subdivision 3. Felony Conviction. The licensor shall not issue a license to any person, firm or corporation of which a member, officer or director has been convicted of a felony.

Subdivision 4. Issuance or Denial. Upon vote of the Council to issue a license, the Clerk shall issue the same, but no license shall be issued until the license fee is paid in full. The license shall specify the name of the licensee, the specific place where each recreational game is located, the number of games authorized to be operated thereunder, and the date on which the license shall begin and expire.

- A. Whenever the Council shall deny any license application, the Council shall state in writing the reasons therefor.

B. The City Council may place any conditions on a license that it deems reasonable.

Subdivision 5. Term. All licenses shall be effective only from the date of issuance to that time of expiration fixed in the license which shall be the first day of January in each year, unless a different expiration date is specified by the Council or Clerk.

Subdivision 6. Refund/Pro-rated Fees. If a licensee shall abandon dominion or control over the games so licensed, or over the premises where said games are located, there shall be no refund of any portion of the license fee theretofore paid and the new person taking either dominion or control of said previously licensed game or games, or over the premises where said games are located shall be required to obtain a new license for the remainder of the term to the next January 1, or other expiration date. The license fee payable by the new licensee shall be prorated monthly for the balance of the term to the next January 1 or other expiration date, a part of a month being considered a whole month .

Subdivision 7. Posting. The license shall be posted up and at all times displayed in a conspicuous place in the room or place where the recreational game is operated on the licensee's premises, so that all persons visiting said premises may readily see the same. It shall be unlawful for any person to post such license or permit it to be posted upon said premises other than those for which the license was issued or knowingly to deface or destroy any such license.

507.03 PROHIBITED ACTS

It shall be unlawful for any licensee, any employee or agent of any licensee or any other person:

Subdivision 1. To violate any terms of the permit.

Subdivision 2. To suffer or permit the maintenance of a public nuisance as defined herein upon his premises.

507.04 AGENCY

The acts and conduct of the agents and employees of a licensee shall be deemed the acts or conduct of the licensee for purposes of this Part.

507.05 LICENSE REVOCATION

The City Council may at any time, for cause, as hereinafter specified, revoke any license:

Subdivision 1. Notice. The City Council, should it desire to revoke any license granted hereunder, shall in writing specify to the licensee at the licensee's last known address by mail, the reasons for seeking revocation and in the same notice, establish a date for a public hearing before the City Council, said hearing to occur no earlier than ten (10) days following the date of mailing of said notice of cause and hearing.

Subdivision 2. Appearance and Representation. The licensee shall be allowed to be heard and may appear by attorney or with an attorney at no expense to the City.

Subdivision 3. Conduct of Hearing. All interested persons shall be heard at said hearing which shall be presided over by the Mayor.

Subdivision 4. Effective Action. Said hearing shall be deemed a legislative function, not judicial, and such revocation shall be deemed final for the remaining term of the license so revoked.

Subdivision 5. Prior Revocation. The City Council may consider past license revocations under this Part as grounds to reject or fail to renew such licenses hereunder.

Subdivision 6. Findings. In any revocation action by the Council, the Council shall make specific findings of fact, which findings shall be served by mail upon the licensee affected thereby within five (5) days after the hearing.

Subdivision 7. Prosecution. Nothing in this Section shall prevent the City from criminally prosecuting any licensee for violations hereunder, notwithstanding any civil revocation action taken.

Subdivision 8. Reissuance. If a license of any licensee is revoked, no license shall, for a period of one year after the date of revocation, be granted to such person as defined herein, unless, upon a licensee's petition to the Council, the grounds for the revocation have been cured and the licensee proves he has purged himself of any misconduct or other circumstances which were the basis for revocation. Said petition shall be in writing and the Council, upon receipt thereof, shall notify the petitioner of a date for a hearing and establish such reasonable hearing procedures as it desires from time to time, assuring that all interested persons may be heard.

507.06 LICENSE RENEWALS

Every license which expires as hereinbefore stated may at the option of the licensee be renewed upon proper application therefor as herein provided.

Subdivision 1. Duplicate Licenses. When a license shall be lost or destroyed without fault on the part of the licensee or the licensee's agent or employees, a duplicate may be issued by the City Clerk only to include the unexpired term thereof upon payment of a fee of Three Dollars and Fifty Cents (\$3.50). This fee may be changed by resolution of the City Council.

Subdivision 2. Change of Location. Should a licensee desire to change the licensee's place of business to a new location, the City Council, may at its discretion order the Clerk to issue, upon surrender of the original license and payment of a fee of Three Dollars and Fifty Cents (\$3.50), a new license for the new location for the unexpired term of the original license. This fee may be changed by resolution of the City Council.

Subdivision 3. Notification. Any licensee shall, upon change of location of any recreational game or upon change of the person who is the licensee as defined in Section 507.01 of this Part, notify in writing the City Clerk thereof immediately.

507.07 CRIMINAL PENALTIES

Subdivision 1. Misdemeanor. Any person violating any of the provisions of this Part shall be deemed guilty of a misdemeanor.

Subdivision 2. Cumulative Offenses. If the Council revokes any license or licenses of a prior license holder, and said persons permit any recreational game on his premises after notice of the Council's decision and findings of revocation, each day an unlicensed recreational game is permitted on a person's premises shall be deemed a separate criminal offense under this Section.

PART 8. PEDDLERS, SOLICITORS, TRANSIENT MERCHANTS

508.01 DEFINITIONS

Subdivision 1. General. Unless the context clearly indicates otherwise, the following words and phrases have the meaning given them in this section.

Subdivision 2. Peddler. "Peddler" means any person with no fixed place of business who goes from house to house, from place to place, or from street to street, carrying or transporting goods, wares or merchandise and offering or exposing the same for sale, or making sales and deliveries to purchasers.

Subdivision 3. Solicitor. "Solicitor" means any person who goes from house to house, from place to place, or from street to street soliciting or taking or attempting to take orders for any goods, wares or merchandise, including books, periodicals, magazines or personal property of any nature whatsoever for future delivery. "Solicitor" does not include any person taking or attempting to take orders to be filled by goods, wares or merchandise delivered to the purchaser from other states.

Subdivision 4. Transient Merchant. "Transient merchant" means any person firm or corporation who engages temporarily in the business of selling and delivering goods, wares or merchandise within the City, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, vacant lot space, motor vehicle, trailer, railroad car or other vehicle, whether on public or private property.

508.02 "GREEN RIVER" PROVISIONS FOR PEDDLERS AND SOLICITORS

Any resident of the City who wishes to exclude peddlers or solicitors from premises occupied by him may place upon or near the usual entrance to such premises a printed placard or sign bearing the following notice: "Peddlers and Solicitors Prohibited." Such placard shall be at least 3-3/4 inches long and 3-3/4 inches wide and the printing thereon shall not be smaller than 48-point

type. No peddler or solicitor shall enter in or upon any premises or attempt to enter in or upon any premises here such placard or sign is placed and maintained. No person other than the person occupying such premises shall remove, injure or deface such placard or sign.

508.03 LICENSE REQUIRED FOR TRANSIENT MERCHANTS

No transient merchant shall sell or offer for sale any goods, wares or merchandise within the City unless a license therefor shall first be secured as provided in this ordinance.

508.04 APPLICATION AND ISSUANCE

Application for such license shall be made to the City Clerk on a form supplied by the City. The information required by said application form shall be determined by the City Clerk either with or without the approval of the City Council.

Blank applications shall be issued by the Clerk upon request. The completed application shall be acted upon by the Clerk, who may grant the license with or without consulting the Council. If the Clerk elects, he may consult with the City Council prior to issuing said license. If the Clerk denies the license, the applicant may appeal the Clerk's decision to the Council and require the Clerk to place the matter on the agenda of the next regular Council meeting, at which time the Council shall review the Clerk's decision and make its determination as to whether or not the license shall be issued.

508.05 LICENSE FEES

The fee for each license shall be established by Council resolution, which shall not be refundable. The City Council by resolution may change the fee without notice, and may by resolution set different fees for different types of licensees without notice.

508.06 DURATION OF LICENSE

Each license shall be valid through December 31 of the year of issuance unless otherwise specified therein.

508.07 SPECIAL TERMS OF LICENSE

The City Council may impose special terms and conditions for use of the license by the licensee including, but not limited to, restricting the total number of licenses issued under this ordinance, restricting the location where the licensee may operate said business, restricting the hours of the day during which the licensee may be open for business, and restricting the days of the week during which the licensee may be open for business, and any other matter.

508.08 LICENSE NOT TRANSFERABLE

All licenses shall be non-transferable. Each licensee shall secure a separate license.

508.09 LICENSE TO BE CARRIED

All licenses shall be carried by the licensee or conspicuously posted in his place of business and the license shall be exhibited to any officer or citizen upon his request.

508.10 PRACTICES PROHIBITED

No licensee shall call attention to his business or to his merchandise, by crying out, by blowing a horn, by ringing a bell, or by any loud or unusual noise.

508.11 PUBLIC HEALTH AND SAFETY

All licensees shall conduct the business in such a manner as to protect and preserve the health and safety of its customers and the public in general, shall maintain clean and sanitary conditions in their places of business, and shall abide by all laws, ordinances, rules and regulations applicable to their business activities.

508.12 EXEMPTIONS

This ordinance does not apply to any statutory sale, to any sale under court order, to any bona fide auction sale, or to a sale at wholesale to a retail dealer.

508.13 REVOCATION

Any license may be revoked by the Council for a violation of any provision of this ordinance if the licensee has been given a reasonable notice and an opportunity to be heard.

PART 9. MOVING OF BUILDINGS

509.01 PERMIT REQUIRED

It shall be unlawful for any person, company or corporation to move or cause to be moved any building or structure over and upon any street, alley or public ground in said City without having previously obtained a permit to use such streets, alleys or public grounds for such moving as hereinafter provided.

509.02 APPLICATION

Before commencing such moving the person in charge of such work shall make an application in writing to the Clerk for a permit to use and occupy the streets and alleys or other public grounds for such work, and shall in such application state the route to be taken, the time when such work is to be commenced, and also that he by such work will not do any damage to such streets, public grounds or other property.

509.03 DEPOSIT REQUIRED

No permit shall be issued unless and until the applicant shall have given a deposit to the City in the sum of \$100.00. For the moving of small buildings or structures which are easily moved, the City Clerk may waive this requirement. If, in the judgment of the Clerk, said deposit may not be adequate to pay the items set forth below, the City Clerk may require a larger deposit or bond.

Subdivision 1. Damage. Said party will pay any and all damage which may be caused to any property, either public or private, within this municipality, whether such damage or injury shall be inflicted by said party or his agents, employees or workmen; and

Subdivision 2. Indemnification. That said party will save and indemnify and keep harmless this municipality against all liabilities, judgments, costs and expenses, which in any wise accrue against said City in consequence of the granting of such permit; and

Subdivision 3. Compliance. Will in all things strictly comply with the provisions of all City ordinances and state law and any permit issued hereunder.

Subdivision 4. Refund or Reimbursement. After payment of all items set forth in Subdivisions 1, 2 and 3, above, any unused portion of the deposit shall be refunded and, if said items exceed the deposit that was made, the applicant shall reimburse the City for any amounts not covered by said deposit.

509.04 INSURANCE REQUIRED

No permit shall be issued unless and until the applicant shall first file with the Clerk a policy or policies of insurance or certificate of such insurance, with a corporate insurer authorized to do such business in the State of Minnesota, insuring such applicant against liability imposed by law during all times of performing work under the permit granted pursuant to this ordinance, on account of damage to or destruction of property or injury to persons in the amount of at least \$100,000.00 for a single injury or claim of property damage and at least \$300,000.00 maximum liability. Such policy shall provide that it may not be cancelled by the insurer except upon notice to this municipality. In case of cancellation of such insurance such license shall be suspended automatically until such insurance has been replaced.

509.05 ISSUANCE AND FEE

Upon receiving such application, if the Clerk shall deem the same to meet the requirements of this ordinance and to be otherwise reasonable, he may issue a permit to use the streets or public grounds designated in the application for the purpose therein stated, or may refer the application to the Council at its next regular meeting. The permit fee of \$20.00 shall be paid to the Clerk at the time of filing the application. This fee may be changed by City Council resolution.

PART 10. NATURAL GAS FRANCHISE

The franchise granted to Great Plains Natural Gas Company on July 11, 1983 for purposes of a natural gas system is hereby continued in accordance with the following terms and conditions.

510.01 GRANT

City hereby grants Company, for a period of twenty (20) years from July 11, 1983, the right and privilege of erecting a gas plant and using the public ways and public grounds of City for the purpose of installing, operating, repairing, and maintaining, in, on, over, under, and across the same, all gas pipes, mains, and appurtenances, usually, conveniently, or necessarily used in connection therewith, for the purpose of transmitting and furnishing gas for public and private use within and through the limits of City as its boundaries exist or as they may be extended in the future. Company may also do all reasonable things necessary or customary to accomplish those purposes, subject, however, to the further provisions of this franchise.

510.02 RESTRICTIONS

Subdivision 1. All gas pipes, mains, regulators and other property and facilities shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, travel upon the use of public ways of City. In installing, repairing, maintaining, removing, or replacing said gas pipes, mains and appurtenances, Company shall, in all cases, place the public ways, in, on, under, or across which the same are located in as good condition as they were prior to said operation.

Subdivision 2. Company shall provide field locations for all its underground facilities when requested by City within a reasonable period of time. The period of time will be considered reasonable if it compares favorably with the average time required by the Cities in the County to located municipal underground facilities for Company. (“County” refers to the County in which City is located.)

Subdivision 3. Before Company constructs any new structure or converts any existing structure for the manufacture or storage of gas, Company shall first obtain the approval of the structure and the location thereof from City. Such approval by City shall not be unreasonably withheld.

510.03 SERVICE, RATES, MEASUREMENT

The service to be provided, the measurement of, and the rates to be charged by Company for gas service in City are subject to the jurisdiction of the Public Utilities Commission of this State or its successor agency.

510.04 RELOCATING

Subdivision 1. Whenever City shall grade, regrade or change the line of any public way, or construct or reconstruct any City utility system therein and shall, in the proper exercise of its police power, and with due regard to seasonable working conditions, when necessary order Company to relocate permanently its mains, service and other property located in said public way, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any public way, or to construct or reconstruct any City utility system therein.

Subdivision 2. Any relocation, removal or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of Minnesota Statutes Section §161.46 as supplemental or amended.

Subdivision 3. Nothing contained herein shall relieve any person, persons, or corporations from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading, regrading or changing the line of any public way, or with the construction or reconstruction of any City utility system.

510.05 INDEMNIFICATION

Company shall indemnify, keep and hold City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair or operations of Company's gas facilities located in, on, over, under, or across the public ways and public grounds of City, unless such injury or damage grows out of the negligence of City, its employees, or agents, or results from the performance in a proper manner of acts reasonably deemed hazardous by Company, but such performance is nevertheless ordered or directed by City after notice of Company's determination. In the event a suit shall be brought against City under circumstances where the above agreement to indemnify applies, Company at its sole cost and expense shall defend City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If such notice is not reasonably given as hereinbefore provided, Company shall have no duty to indemnify nor defend. If Company is required to indemnify and defend, it will thereafter have complete control of such litigation, but Company may not settle such litigation without the consent of City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to Company; and Company, in defending any action on behalf of City, shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf.

510.06 VACATION OF PUBLIC WAYS

Except where required solely for a City improvement project; the vacation of any public way or public ground, after the installation of gas facilities, shall not operate to deprive Company of its rights to operate and maintain such gas facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company by the party requesting the relocation.

510.07 WRITTEN ACCEPTANCE

A written acceptance has been filed with the City by the Company and is on file with the City.

510.08 SEPARABILITY

Every section or provision of this Part is declared separate from every other section or provision; and if any section or provision shall be held invalid, it shall not affect any other section or provision of this Part.

510.09 PUBLICATION EXPENSE

The expense of any publication of this franchise required by law shall be paid by the Company.

PART 11. ELECTRICAL SYSTEM FRANCHISE

511.01 GRANT OF FRANCHISE

There is hereby granted to Otter Tail Power Company, a division of Otter Tail Corporation, a Minnesota Corporation, its successors and assigns, hereinafter called the Grantee, for a period of twenty (20) years from and after the passage and approval of this Ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install and maintain an electric light and power system and transmission lines and to operate and maintain the same within and through the City and to transmit electricity to and from other towns or cities for the purpose of light, power and heat and to erect, construct, install and maintain conduits, poles, wires, pipes and other necessary fixtures and attachments upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing and selling electricity for light, heat and power and such other purposes for which electricity may be used by the inhabitants of said City, said permission and franchise to become operative and continue under the conditions hereinafter set forth.

511.02 STANDARDS AND LOCATION OF CONSTRUCTION

Said grantee shall use poles, wires, crossarms, equipment and devices to conform with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets and alleys and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets and alleys or public places by the inhabitants of said City, or public in general, or to interfere with any street, sidewalk, curb, gutter or park improvements that the City may deem proper to make along the lines of said avenues, streets and public places.

All conduits, poles, wires and pipes installed by virtue of this Ordinance shall be installed in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges or public grounds and places of said City and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon, and the installation thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practicable, all poles shall be set in alleys and poles now in position upon or along the streets, whenever practicable, shall be removed, and the locations of all of said poles shall be designated by the City Administrator subject to review of the City Council.

All poles where set in alleys shall be set at or near the boundary line thereof, and where set in streets shall be located at such distances as shall be directed by the City, from the property line of the abutting owner, and shall be placed so as not to interfere with the construction or placing of any water pipes, sewers or drains or the flow of water therefrom which have been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstructions of said streets, alleys, public grounds, or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

511.03 PUBLIC TRAVEL

During the construction, maintenance or enlargement of any part of said electric light and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City, and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The City reserves the right for itself and its agents to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to, such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

511.04 EXCAVATIONS

Whenever the said Grantee in erecting, constructing and maintaining said lines or poles, shall take up any of the payments, sidewalks, crossings or curbs on any of the avenues, streets and alleys, or public places in said City or shall make any excavations thereon; such excavations shall be refilled and the sidewalk, crossing or curb replaced under the direction of the said City and any excavation so made shall be properly lighted at night during the construction, and in case of the failure to do so on the part of the said Grantee, then the said City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work. Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the said City, caused by it, or its agents, servants, or employees in erecting, operating and maintaining the said electric system with said City, and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

511.05 TRIMMING

There is granted to said Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets and public grounds of said City so as to remove all parts of said trees interfering with the proper erection, maintenance and operation of poles, cables, wires, masts or other fixtures, or appliances installed or to be installed pursuant to authority hereby granted.

Said Grantee shall have full right and authority to assign to any person, persons, firm or corporation all the rights that are given it by this Ordinance, provided, that the assignee of such rights by accepting such assignment shall become subject to the terms and conditions of this Ordinance.

511.06 SERVICE FAILURE

The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

511.07 SERVICE RATES

The rate to be charged by said Grantee in the said City shall be filed with the Public Utilities Commission of the State of Minnesota, and no increase or decrease in said rates shall be made except in accordance with the rules and regulations of the Public Utilities Commission.

511.08 SUBJECT TO OTHER REGULATIONS

This contract shall be subject to any present or future laws of a regulatory nature enacted by the State of Minnesota, or any amendment or addition to such laws, and further shall be subject to the rules and regulations laid down by the Public Utilities Commission of the State of Minnesota.

511.09 WRITTEN ACCEPTANCE

A written acceptance of this Electrical System Franchise shall be executed by the Grantee and said written acceptance shall be filed with the City.

PART 12. CABLE TELEVISION FRANCHISE

512.01 INCORPORATION BY REFERENCE

The Pelican Rapids ordinance creating and awarding a cable communications franchise in the City of Pelican Rapids, as amended, is hereby incorporated by reference as if fully set forth herein.