



City of Bloomington Common Council

Regular Session 07 December 2005

Office of the Common Council
P.O. Box 100
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Bloomington, Indiana 47402

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Packet Related Material

Memo

Agenda

Calendar

Notices and Agendas:

Council Sidewalk Committee meeting at noon on Monday, December 5th in the McCloskey Room

Legislation for Final Action:

Ord 05-30 To Amend Title 8 of the Bloomington Municipal Code, Entitled “Historic Preservation and Protection” to Establish a Historic District - Re: 1115 North College Avenue (Travis Vencel, Petitioner)

(Please see the packet prepared for the November 16, 2005 Regular Session for the legislation, summary, and background material.)

Contact: Nancy Hiestand at 349-3507 or hiestann@bloomington.in.gov

App Ord 05-08 To Specially Appropriate from the General Fund, Fleet Maintenance Fund, Parks & Recreation Fund, and Sanitation Fund Expenditures Not Otherwise Appropriated (Appropriating Various Transfers of Funds within the General Fund for Animal Care & Control, Clerk’s Office, Common Council, Community & Family Resources, Housing & Neighborhood Development, Planning, and Police Departments; Appropriating Transfers of Funds within the Parks & Recreation General Fund and within the Sanitation Fund; and Appropriating Funds from the Fleet Maintenance Fund, the General Fund – Fire Department, and for Fuel)

(Please see the packet prepared for the November 16, 2005 Regular Session for the legislation, summary, and background material.)

Contact: Susan Clark at 349-3416 or clarks@bloomington.in.gov

Legislation and Background Material for First Reading:

Ord 05-33 To Amend Title 7 of the Bloomington Municipal Code Entitled “Animals” – Re: Extensive Amendments which Delete Chapter 7.12 (Licensing) and Make Changes to All the Other Chapters in the Title

- Memo from Julio Alonso, Director of Public Works; Summary of Changes; Summary of Public Comments at Commission Meeting in November; Title 7 (Animals) – Annotated with Changes

Contact: Julio Alonso at 349-3516 or alonsoj@bloomington.in.gov

Regarding Ord 05-34 (Wastewater Rates) and Ord 05-35 (Issuance of Bonds for Wastewater and Stormwater Projects)

- Memo from Vickie Renfrow, Assistant City Attorney (*Note: This memo includes the cost estimates for bond projects cited in Ord 05-35.*)

Contact: Vickie Renfrow at 349-3557 or renfrowv@bloomington.in.gov

Ord 05-34 To Amend Title 10 of the Bloomington Municipal Code Entitled “Wastewater” (Wastewater Rate Adjustment)

- BMC 10.08 (Wastewater Rates and Charges) – Annotated with Changes

Contact: Vickie Renfrow at 349-3557 or renfrowv@bloomington.in.gov

Ord 05-35 An Ordinance to Authorize Issuance of Sewage Works Revenue Bonds (For Wastewater and Storm Water Projects)

- Exh A (List of Projects); Exh B (Financial Assistance Agreement - for the State Revolving Loan Fund)

Contact: Vickie Renfrow at 349-3557 or renfrowv@bloomington.in.gov

Minutes from Regular Session:

None

Memo

Two Ordinances Ready for Final Action and Three Ordinances Ready to be Introduced at the Regular Session on Wednesday, December 7th

The Council is entering into its last legislative cycle of 2005 with the Regular Session on Wednesday, December 7th. That agenda will include two ordinances ready for final action and three ordinances scheduled for discussion at the Committee of the Whole on December 14th and final action at the Regular Session on December 21st. Those three ordinances will be joined by two resolutions that will go out in your packet next Friday. Please note that the legislation and related material ready for final action can be found in the packet distributed for the November 16th Regular Session and the legislation and related material ready for introduction next week can be found in this packet.

First Readings

Item 1 - Ord 05-33 Extensively Amending Title 7 of the Bloomington Municipal Code Entitled “Animals” After a Two-Year Review of the Title

Ord 05-33 offers an extensive revision of Title 7 (Animals) that follows a review of City and County provisions that began over two years ago. According to the memo provided by Julio Alonso, Director of Public Works, members of the City Animal

Control and the County Animal Management commissions and respective staff have been meeting since the summer of 2003 to review their regulations and propose new and more compatible ones which would:

- improve humane treatment of animals;
- reduce the over-population of animals and the corresponding burden on the public;
- ensure public health and safety; and
- clarify and update other regulations.

During the two-year review, the City's document was shared with animal welfare groups, providers of animal care, and the general public (see the Public Comments), reviewed by the city legal department, and then adopted the City's Commission and Board of Public Works. It is my understanding that the County will be presented with changes as well in the near future. Julio has submitted this package with the belief that it finds much common ground between often conflicting points of view and is ready for adoption.

Framework of Title 7 and Introduction to the Changes

Before learning about the more significant changes in this ordinance, it would be useful for you to become reacquainted with the framework of Title 7 and introduced to some of the changes and where you can find them.

Definitions (BMC 7.01) The title begins with three pages of definitions. Here you will find new or modified definitions regarding:

- owner/guardians;
- feral cats and cat colonies;
- vicious and potentially dangerous animals;
- non-municipal animal shelters/sanctuaries;
- public nuisance; and
- tethering, among other terms.

Licensing (BMC 7.12) This chapter required the licensing of all dogs and cats over the age of six months and is being deleted because the regulation was largely unenforceable and because the problems it attempted to address can be handled through other forms of permits.

Categories of Owner/Guardians (BMC 7.16, 7.21 & 7.22) These chapters describe five categories of owner/guardians, each with their own permit, fees, and regulations. These include Commercial Animal Establishments (BMC 7.16),

Commercial and Non-Commercial Kennels (BMC 7.21), and Major and Minor Breeders (BMC 7.22). Here you will find changes that:

- acknowledge the benefits of non-municipal animal shelter/sanctuaries;
- permit and regulate feral cat colonies;
- establish new, more rigorous inspection procedures;
- require facilities to comply with the zoning ordinance; and
- introduce some higher fees and fines.

Duties of Owner/Guardians to Their Pets and the General Public (BMC 7.24, 7.28 & 7.26)

These chapters impose duties upon owner/guardians in regard to their pets and the general public. They include Restraint (7.24), Public Nuisance (7.28), and Animal Care (7.32). Here you will find changes that:

- establish an administrative procedure for determining whether an animal is potentially dangerous or vicious, specific requirements for their restraint and care, and fines for violating of these duties;
- impose new, more specific regulations for the tethering of animals and fines for failure to abide by them; and
- increase fines for poisoning or mistreating animals (which rise from \$500 to \$2,500).

Impoundment (BMC 7.32) This code, at times, allows or requires the animal control officers to impound animals because they are at-large, abandoned, endangered, or dangerous. Here you will find changes that:

- clarify the time period after which an unclaimed animal becomes property of the shelter (typically 5-working days);
- allow for the posting of bonds for owner/guardians who cannot pick the animal up within the time period;
- require animals impounded for the second time in 12 months to be microchipped and altered at the owner/guardian's expense; and
- give the Director discretion to waive fees and fines when the owner/guardian agrees to have the animal altered.

Wild Animals and Reptiles (BMC 7.40 & 7.42) These chapters prohibit persons from owning wild animals and require owner/guardians to register certain reptiles. You will find minor changes that:

- rename the department and insert the numerical along with the spelled-out amount of fees and fines (please note that these appear throughout the ordinance); and
- acknowledge an exception for licensed educators.

Rabies (BMC 7.44) This chapter establishes procedures for the monitoring and testing of animals which bite humans in order to determine whether the animals have rabies. You find changes that:

- require a similar procedure for animals that bite animals.

Adopted Animals (BMC 7.48) This chapter establishes the procedure for adopting animals. It was amended late last year and is not significantly affected by this ordinance.

General Provisions (BMC 7.52) This chapter sets forth some general provisions regarding the disposition of funds, the conduct of animal census, interference with animal control officers and some common procedural provisions. You will find changes that:

- delete reference to an animal control fund; and
- acknowledge the statutory limit on fines (\$2,500 per violation).

A Summary of Three Categories of Significant Changes

The following paragraphs organize and present the changes according to the goals of:

- reducing over-population of animals;
- improving the humane treatment of animals; and
- ensuring the public health and safety.

Changes Primarily Aimed at Reducing the Over-Population of Animals and the Corresponding Burden on the Public

Regulate Feral Cat Colonies and Codify the Trap, Neuter, Release Program (BMC 7.01.010 and BMC 7.21.026). One of the more novel revisions to the Code authorize the trapping, neutering and vaccinating, ear-tipping and returning the feral cats to colonies overseen by a human caretaker with a permit. This program is partly based on the experience in about a half dozen communities around the country, including Indianapolis, and promises to reduce the population of feral cats by returning the altered animals to their old territories and, thereby, preventing other reproducing clans from taking over the ground. This proposal would regulate this currently unregulated practice and require that there be a caretaker who will:

- to obtain an annual permit at no cost for overseeing colonies larger than six animals. In order to obtain a permit the caretaker must provide their own contact information, a description and proof of rabies vaccination for each cat

in the colony, and statement of whether the person has been convicted of animal cruelty;

- allow the animal control officers to inspect the colony at reasonable times (or be subject to a warrant conduct the inspection);
- be responsible for adequate care of the animals; and
- to operate the colony so as not to create a nuisance.

Require Permits for Persons Who Intentionally or Unintentionally Breed Cats and Dogs (BMC 7.22 - Breeders).

The proposed revisions eliminate the requirement that dogs and cats over the age of six months be licensed and does so because the regulation was based upon an honor system that was largely unenforceable. Please note that this change does not affect the requirement that owner/guardians provide proof that their cats and dogs be given rabies shots each year. While eliminating the general licensing requirement, the new regulations still encourage the spaying and neutering of these animals by requiring the registration of animals in the event they breed or are likely to breed. With that in mind, the regulations:

- increase the fees for a minor breeder permit from \$60 to \$100 and for the major breeder permit from \$100 to \$150;
- require owner/guardians of unaltered animals who roam outside the person's property to register as a minor breeder, unless the person elects to have the animal spayed or neutered;
- require the department to alter and microchip animals that have been found unrestrained more than once in a 12-month period before returning them to their owner/guardians; and
- give the director the discretion to waive fines and fees for owner/guardians who agree to have their animals altered.

Increase Limit of Dogs and Cats Required for Non-Kennel Permit (BMC 7.01.010 - Non-Commercial Kennel Permit)

The proposed revisions allow owner/guardians to have more pets before being required to obtain a "non-commercial kennel" permit. Rather than setting that limit at four altered animals, the revisions would require this permit when an owner/guardian had more than four altered dogs, six altered cats, or a total of more than 10 altered dogs and cats. This requirement is intended to decrease the euthanization of animals, while still assuring their good care and, therefore, does not apply to persons participating in the local foster program. Please note that this ordinance does not limit the number of animals one may own as long as one has the proper permit, complies with the animal care requirements, and doesn't create a nuisance.

Changes Primarily Aimed at Improving the Humane Treatment of Animals

Guardian Language (Throughout the BMC). The proposed revisions change the term “owner” to “owner/guardian” at the request of a local citizen who represents a national campaign desiring to redefine the relationship between humans and their pets in order to “foster greater respect, responsibility and compassion toward animal companions.”

Tethering Restrictions (BMC 7.36.050). The proposed revisions introduce restrictions regarding the tethering of animals. Based on the premise that long periods of restraint make dogs neurotic and aggressive, and following the recommendations of the Humane Society of the United States and 25 other communities (including two in Indiana), the new regulations would restrict:

- the tethering of animals to no more than 10 consecutive hours and no more than 12 hours in a 24-hour period; and
- the tether’s weight (no more than 1/8th the weight of the animal), length (no shorter than 10 feet, but short enough to confine the animal to the property of the owner/guardian), and manner of attachment (to a buckled, non-choker or pinch collar or harness with swivels at both ends and designed to avoid entanglement and to allow access to necessary shelter, water and food).

More Specific Standards for Animal Care BMC (7.36) The current provisions provide only general guidance regarding the care of animals. The proposed revisions:

- provide more specific standards, for example, by requiring that the shelter be structurally sound, dry, windproof, protect against heat and cold, and be capable of cleaning;
- prohibit owner/guardians from transporting animals in a manner that makes the animal suffer due to extreme temperatures or lack of food or water;
- Prohibit the auctioning of any live animal except domestic livestock; and
- Increase the fine from \$500 to \$2,500 for:
 - poisoning any animal except mice and rats;
 - committing cruelty, abuse, or neglect of an animal; and
 - using “devises to induce performance” (e.g. electrical prods).

Inspections The proposed revisions expand upon the inspection provisions by broadening the persons who may inspect to include designees of animal control staff, requiring inspectors to prepare and maintain written reports of the inspections, and authorizing them to enter the premises and structures at reasonable times and subject

to the constitutional limitations on searches and seizures (which would entail seeking a warrant in the event someone refuses entry).

Changes Primarily Aimed at Ensuring Public Health and Safety

New Administrative Procedure for Determining and Reviewing the Status of “Potentially Dangerous” and “Vicious” Animals; New Duties for Their Owner/Guardians; New Fines for Failure to Comply with New Restraint Regulations (BMC 7.01.010, BMC 7.24.030 - 040). The proposed revisions include much more regulations and procedures regarding the determination and handling of “potentially dangerous” and “vicious” animals. The current definition of “vicious” is rather general and the regulations leave that determination up to an animal control officer, who then may require the owner to confine the animal within a building or secure enclosure or, if taking the animal off the premises, to muzzle, restrain or cage it. The revisions add graduated definitions of “potentially dangerous” and “vicious” animals as well as a definition of “severe injuries.” They also establish an administrative hearing for determining the status of the animal which includes:

- A request for the hearing by an animal control or law enforcement officer after they have probable cause to believe the animal is vicious or potentially dangerous;
- Impoundment of the animal prior to the hearing, if the officer has probable cause to believe the animal poses an “immediate threat to public safety,” which will be at the owner/guardian’s expense, unless Commission determines that the animal is not vicious or potentially dangerous;
- notice to the owner/guardian with the complaint and information about the date, time, place, and conduct of the hearing;
- an open hearing held by the Commission to consider evidence and make a decision based upon the surrounding circumstances whether the incident indicates the animal is potentially dangerous or vicious “in ordinary circumstances where the average person could not reasonably be expected to foresee and take measures to prevent the injury;”
- written notice to the owner/guardian of the determination; and
- an opportunity for the owner/guardian to ask for reconsideration of the decision no more than one time a year.

If the Commission determines the animal is potentially dangerous or vicious, it may give the owner/guardian no more than 30 days to restrain and alter the animal. In the event the Commission makes further findings regarding vicious animals, it may also

impose additional, reasonable duties upon the owner, or if necessary, have the animal destroyed.

Owner/guardians of these animals have special obligations to restrain them. They must do so while the animal is both on and off the premises and must post notice of the danger at all entry points to the premises as well as on the animal's enclosure. The owner/guardian of the vicious animal must also have the department approve the enclosure and may only take the animal off the premises to visit the Veterinarian. Second, they must inform the department in writing within two working days in the event the animal dies or is sold or transferred (in which case they must also provide the new location of the animal).

Fines: The current fines for violating Chapter 7.24 (Restraint) rise depending on the likelihood the violation will result in a litter of animals or endanger the public, and then escalate with each subsequent violation occurring within 12 months. For example, the fine for failing to restrain an altered animal (excluding cats with identification) is \$20, an unaltered animal is \$40, an animal in heat is \$100 (and \$150 for a subsequent offense), and a vicious animal is \$100 (and \$150 for a subsequent offense). The proposed revisions add fines regarding potentially dangerous or vicious animals for failing to:

- post warnings or notifying the department of a change in their status (\$50);
- alter them or prevent them from breeding (\$100); or
- comply with other reasonable requirements imposed by the Commission (\$100).

Public Nuisance (BMC 7.01.010 – Definitions). The proposed revisions add another criterion to the definition of public nuisance. Currently an animal is a public nuisance if it: molests a passerby or passing car; attacks another animal, damages property; barks, whines or howls in an excessive or continuous fashion, or defecates on property other than that of its owner/guardian unless the waste is immediately removed in a sanitary manner. The new criterion deals with animals that “interfere with a person’s free use and comfortable enjoyment of life or property.”

Items 2 and 3 - Ord 05-34 Adjusting Wastewater Rates and Ord 05-35 Authorizing the Issuance of Bonds for Wastewater and Stormwater Projects

The next two ordinances raise wastewater rates (Ord 05-34) and authorize the issuance of bonds for both the wastewater and stormwater projects (Ord 05-35). The following summary borrows from the memo in this packet provided by Vickie Renfrow, Assistant City Attorney, and approaches these pieces of legislation by first mentioning the amendments to Title 10 (Wastewater Rates), the amount of revenue the rates will produce, how the revenue will be used, and the effect the rates will have on the average residential user. Then the summary mentions stormwater projects that, along with the wastewater projects, will be funded by the bonds to be issued as a result of Ord 05-35. And lastly, it provides an overview of the fiscal and legal effect of the bond ordinance.

Wastewater Rate Adjustment

Ord 05-34 raises wastewater rates by approximately 13.03% and the combined wastewater and stormwater rates by 11.9%. It will be the third adjustment since 2000 and would result in an average increase of about 5% per year over the last five years.

Proposed Amendments to the Code - Changes in Particular Wastewater Rates and Charges

The ordinance increases the wastewater rates by 13.03% effective in January of 2006. Wastewater rates are based upon two factors. The first factor is the amount of water used by the customer. That amount is generally determined by the water meter for CBU water customers and by other measures for those who have no meters. However, for residents who water their lawns in the summer, the Utilities Services Board has discretion to ignore water that does not return to the utility, by setting usage at pre-summer levels and determining the months when these lower levels apply. The second factor relates to the wastewater coming from industrial customers, which is subject to additional rates (covered later in this memo) depending upon the treatment required to neutralize the pollutants.

Metered Water Users - Given the exception for residential customers noted in the first paragraph, the ordinance raises the charge for each 1,000 gallons of water used by the four classes of utility customers - Residential, Commercial, Indiana University, and Industrial - from \$3.68 to \$4.16 (or 13.04%) and raises the monthly service charge from \$3.77 to \$4.26 (or 13%).

Non-Metered Users - The annual minimum rate for users who are wastewater, but not water, customers (and, therefore, not on a water meter) will rise from \$366.70 to \$414.37 (or 13 %).

Special Service Rates - As noted above, the code imposes monthly fees and charges for special services performed by the utility for the testing and treatment of wastewater containing pollutants of a non-conventional nature or strength that come from industrial users. These fees and charges include:

- a per-meter service charge (which will rise from \$3.77 to \$4.26 - or 13%);
- special laboratory charges for testing biochemical oxygen demand (BOD) and suspended solids (SS), grease and oil, and metals (which will rise an average of 13%);
- a per-1,000 gallon user charge for non-excessive levels of pollutants (which will rise from \$3.68 to \$4.26 - or 13%); and
- a per-pound charge for high levels of BOD's and SS's (which will rise about 12.97%).

Please note that, upon advice of the bond counsel, the ordinance now combines the operations, maintenance and replacement expense component with the capital-related cost component to yield one undivided rate.

Amount of Revenues Raised, Use of Revenues (Mostly Capital Projects), and Effect Rate on Average Residential Customer

This rate adjustment will produce about \$1.48 million in additional revenue each year and as is typical for these utilities, about a quarter of the revenues will be used for debt service. This increase is necessitated by:

- higher costs for operation and maintenance due to inflation;
- greater demand for system improvements; and
- the need to continue with a capital plan that will bring us into compliance with an Agreed Order with IDEM and other regulatory requirements.

The following chart was taken from the background materials and modified for purposes of this memo. It provides a good overview of the revenues to be raised by this adjustment, how the revenues will be used, and how the rate will affect the average residential customer:

	Capital Cost	Revenue Increase Required	Percentage Rate Increase	Increase for Average Residential User of 5,000 g/mo	Cumulative Rate Change
WASTEWATER: Current Fee					\$22.17
“Catch-up” and O & M	NA	\$587,170	5.18%	\$1.15	23.32
About 40% of the adjustment will be used for increases in the cost of operating and maintaining the wastewater program and facilities and provide for small capital projects.					
Wet Weather Program	\$3,000,000	211,306	1.86%	0.41	23.73
About 14% of the adjustment will be used to replace or rehabilitate sanitary sewer lines in the downtown in order to separate storm from sanitary sewer water and comply with the Agreed Order with IDEM.					
Building Construction	1,200,000	92,338	0.81%	0.18	23.91
About 6% of the adjustment will provide the waste water utility contribution towards the construction of the new CBU Administration Building.					
Blucher Poole Phase II Improvements	3,400,000	261,518	2.31%	0.51	24.42
About 18% of the adjustment will fund about \$3.4 million of the \$7.1 million Phase II improvements at Blucher Poole. The remaining \$3.7 million has been financed through previous State Revolving Fund loans. These improvements are required by the Agreed Order with IDEM and are designed to improve the efficiency of this 35 year old plant and its aging components. Briefly, the improvements will improve the flow into plant (by allowing the pumps to work at variable speeds, replacing screens, and adding apparatus to remove grit), improve the drying of waste, enable the monitoring of wastewater brought in by haulers, further integrate the Supervisory Control and Date Acquisition (SCADA) system which helps automate the treatment of wastewater, and protect the plant from lightning damage.					
Dillman Road Headworks Improvements	3,350,000	257,713	2.27%	0.51	24.93
Another 18% of the adjustment will provide the \$3.35 million needed to fully use the capacity of the Dillman Road Plant and reduce the incidents of sanitary sewer overflows. The improvement will increase the pumping capacity from 30 mgd to 47 mgd and, thereby, match other previous improvements at the plant. They will also provide additional, reserve pumps in accordance with accepted standards of practice.					
Dillman Road Disinfection and Dechlorination Improvements	882,500	67,876	0.60%	0.13	\$25.06
About 4% of the adjustment will raise \$882,000 to improve the dechlorination and disinfection processes at Dillman Road in compliance with the Agreed Order with IDEM and regulatory permits. These improvements will convert the disinfection process from gaseous chlorine to sodium hypochlorite which is intended to reduce the formation of harmful chlorinated compounds as required by federal regulations.					
Totals	\$11,832,500.00	\$1,477,921.00	13.03%	\$2.89	\$25.06

Proposed Stormwater Projects

The foregoing chart sets forth the many wastewater projects to be funded by the increased revenue and through the issuance of bonds authorized by **Ord 05-35** (the next ordinance). That authorization will also include bonds for stormwater projects that can be funded with existing stormwater rates and without an increase. As the

memo from Vickie Renvrow states, the current stormwater rates will cover ongoing expenses, retire a one-year \$2.7 million Bond Anticipatory Note (BAN) for the improvements at Miller Showers Park and College Mall, and provide revenue for an additional \$3.8 million in bond-funded improvements. Based upon the Stormwater Inventory Report prepared at the inception of that utility in 1998, the department recommends funding two projects that fall within that budget. Those projects include replacing 350 feet of aging concrete box culvert between Washington Street and Walnut Street for \$1.55 million (known as Jordan River - Walnut to Washington) and continuing that work for another 860 feet under Walnut Street and to First Street for \$2.3 million (known as Jordan River - Spankers Branch under Walnut).

Authorizing Issuance of Wastewater and Stormwater Bonds

Ord 05-35 approves the issuance of \$18.93 million in sewage works revenue bonds for improvements to our wastewater (\$11.83 million) and stormwater (\$6.57 million) systems. The bonds will be funded by adjusted wastewater and existing stormwater rates and used to pay for the costs of issuance as well as the improvements that are listed in Exhibit A of this ordinance and discussed in the previous paragraphs. The costs of issuance of the bonds should amount to about \$530,000 and cover three bond packages briefly noted below:

- the Utilities Administration Building, the repayment of the Stormwater BAN, and the Jordan River projects will be funded through revenue bonds issued in 2006 and worth approximately \$7.77 million;
- the Wet Weather Program and Blucher Poole Phase II improvements (see above chart) will be funded through State Revenue Fund (SRF) bonds issued in 2006 and worth approximately \$6.4 million; and
- the Dillman Road Headworks, Disinfection and Dechlorination improvements (see above chart) will be funded through State Revolving Fund (SRF) issued in 2007 and worth approximately \$4.23 million.

The ordinance is a very technical document that takes the steps necessary for the relevant financial interests to prepare and market \$18.93 million dollars worth of bonds for the City, which will be in parity with the approximately \$45.27 million in previously authorized bonds. Other than account for the most recent round of revenue bonds, this ordinance is very similar to the wastewater bond ordinance adopted in 2000 (Ord 00-35). It allows the City to issue Bond Anticipatory Notes (BANs) and, thereby, receive proceeds at an earlier date, and also allows the City to borrow money from the State Revolving Loan Fund (SRF) at low rates (under 8%) in accordance with the terms of a Financial Assistance Agreement. The SRF program was established with federal Clean Water Act moneys. It has a narrower

application and involves much more oversight than with bonds sold directly to the private market, but also offers better rates.

Please note that the ordinance mentions documents that are either attached to or incorporated into the ordinance. These include a list of the projects to be funded with the bonds (Exhibit A), cost estimates for those projects (which is part of Vickie Renfrow's memo), the aforementioned Financial Assistance Agreement with the State of Indiana (Exh B), and Ord 05-34 (rate ordinance).

The ordinance, in highlight:

- Sets the parameters of the bond by putting a limit on the amount (no more than \$18.93 million), interest (no more than 8%), maturity (no more than 30 years after issuance for the private bonds and no more than 20 years for the SRF Bonds) and redemption date (no earlier than 8 years after issuance) and denominations of bond;
- Authorizes the City to use a registrar and paying agent to handle the bonds;
- Authorizes the City to obtain Municipal Bond Insurance if it will lower the cost of issuance and a Qualified Surety Bond in order to satisfy the reserve requirements of the ordinance;
- Authorizes the Mayor, Controller, and Clerk to execute certain documents and take certain actions on behalf of the City. These include obtaining bond insurance and executing the bonds, Official Statement, and Continuing Disclosure Undertaking Agreement;
- Pledges the Net Revenues of the Wastewater Utility towards payment of the bond obligations and requires the City to put the proceeds in certain accounts, use them for limited purposes, keep certain reserves, and invest the proceeds in a certain manner. *(Please note that this debt is not counted towards the debt limit imposed by the State constitution);*
- Commits the City to take other actions in order to protect the bond holders including:
 - Setting rates sufficient to operate and maintain the system and meet bond obligations;
 - Maintaining the sewage works in good condition and providing adequate

insurance;

- Not encumbering or disposing of parts of the wastewater or stormwater system except replaceable parts and, in the event of SRF bonds, without consent of the Financial Authority;
- Requiring the Utility to connect sewage disposers in the service district to the sewer lines;
- Keeping the tax exempt status of these bonds;
- Obtaining the consent of 2/3's of the bondholders for certain amendments; and
- Meeting certain tests before incurring additional debt which are in parity with outstanding bonds.

**NOTICE AND AGENDA FOR
COMMON COUNCIL, REGULAR SESSION
7:30 P.M., WEDNESDAY, DECEMBER 7, 2005
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 NORTH MORTON**

I. ROLL CALL

II. AGENDA SUMMATION

III. APPROVAL OF MINUTES FOR: None

IV. REPORTS FROM:

1. Council Members
2. The Mayor and City Offices
3. Council Committees
4. Public

V. APPOINTMENTS TO BOARDS AND COMMISSIONS

VI. LEGISLATION FOR SECOND READING

1. Ordinance 05-30 To Amend Title 8 of the Bloomington Municipal Code, Entitled “Historic Preservation and Protection” to Establish a Historic District – Re: 1115 North College (Vencel Properties, Inc., Petitioner)

Committee Recommendation: Do Pass 9 – 0 – 0

2. Appropriations Ordinance 05-08 To Specially Appropriate from the General Fund, Fleet Maintenance Fund, Parks & Recreation Fund, and Sanitation Fund Expenditures Not Otherwise Appropriated (Appropriating Various Transfers of Funds within the General Fund for Animal Care & Control, Clerk’s Office, Common Council, Community & Family Resources, Housing & Neighborhood Development, Planning, and Police Departments; Appropriating Transfers of Funds within the Parks & Recreation General Fund and within the Sanitation Fund; and Appropriating Funds from the Fleet Maintenance Fund, the General Fund – Fire Department, and for Fuel)

Committee Recommendation: Do Pass 9 – 0 – 0

VII. LEGISLATION FOR FIRST READING

Ordinance 05-33 To Amend Title 7 of the Bloomington Municipal Coded Entitled “Animals” - Re: Extensive Amendments which Delete Chapter 7.12 (Licensing) and Make Changes to All the Other Chapters in the Title

Ordinance 05-34 To Amend Title 10 of the Bloomington Municipal Code Entitled “Wastewater” (Wastewater Rate Adjustment)

Ordinance 05-35 An Ordinance To Authorize Issuance of Sewage Works Revenue Bonds (For Wastewater and Storm Water Projects)

VIII. PRIVILEGE OF THE FLOOR (This section of the Agenda is limited to a maximum of 25 minutes. Each speaker is allotted 5 minutes.)

IX. ADJOURNMENT

City of
Bloomington
Indiana

City Hall
401 N. Morton St.
Post Office Box 100
Bloomington, Indiana 47402



Office of the Common Council
(812) 349-3409
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To: Council Members
From: Council Office
Re: Calendar for the Week of December 5- 10, 2005
Date: December 2, 2005

Monday, December 5, 2005

12:00 pm Council Sidewalk Committee, McCloskey
4:00 pm Commission on the Status of Black Males, Kelly
5:00 pm Farmer's Market Advisory Council, Parks
5:00 pm Redevelopment Commission, McCloskey
5:30 pm Bicycle and Pedestrian Safety Commission Work Session, Hooker Room

Tuesday, December 6, 2005

1:30 pm Development Review Committee, McCloskey
6:00 pm Neighborhood Improvement Grant Meeting, McCloskey
6:00 pm Sister Cities, Kelly
7:30 pm Telecommunications Commission, Council Chambers
8:00 pm Prospect Hill Executive Committee and Neighborhood Plan, McCloskey

Wednesday, December 7, 2005

12:00 pm Bloomington Urban Enterprise Association, McCloskey
2:00 pm Hearing Officer, Kelly
5:00 pm Black History Month Steering Committee, Hooker Room
7:00 pm Council on Community Accessibility Head Injury Support, Dunlap
7:30 pm Common Council Regular Session, Council Chambers

Thursday, December 8, 2005

12:00 pm Housing Network, McCloskey
3:30 pm Bloomington Historic Preservation Commission, McCloskey
5:15 pm Solid Waste Management District, 3400 Old SR 37
7:00 pm Inclusive Recreation Advisory Council, McCloskey

Friday, December 9, 2005

1:30 pm Metropolitan Planning Organization Policy Meeting, McCloskey



City of Bloomington
Office of the Common Council

MEETING NOTICE

Common Council Sidewalk Committee

The Common Council Sidewalk Committee will meet at 12:00 p.m. on Monday, December 5th and 12th, 2005 in the McCloskey Room at City Hall (401 N. Morton Street). The purpose of the meeting is to discuss sidewalk projects and make recommendations to the full Council regarding allocation of 2006 Alternative Transportation Funds and other committee matters. Because a quorum of the Council may be present, this meeting would also constitute a meeting of the Council as well as of this committee under the Indiana Open Door Law. For that reason, this statement is providing notice that this meeting will occur and is open for the public to attend, observe, and record what transpires.

Posted: Tuesday, November 15, 2005

ORDINANCE 05-33

**TO AMEND TITLE 7 OF THE BLOOMINGTON MUNICIPAL CODE
ENTITLED “ANIMALS”**

**Re: Extensive Amendments which Delete Chapter 7.12 (Licensing) and Make Changes to
All the Other Chapters in the Title**

WHEREAS, Title 7 of the Bloomington Municipal Code sets forth provisions regarding the care and control of animals through the Animal Care and Control Department for the City of Bloomington; and

WHEREAS, Title 7 of the Bloomington Municipal Code does not currently include specific standards for the humane treatment of animals; and

WHEREAS, Title 7 of the Bloomington Municipal Code does not currently include standards that encourage the reduction of animal overpopulation and thus does not reduce the public burden of animal overpopulation; and

WHEREAS, Title 7 of the Bloomington Municipal Code does not currently include specific standards that define what are potentially dangerous and vicious animals and does not address specifically how such animals should be declared to be potentially dangerous or vicious, nor does it address how such animals should be confined or what to do if the animal is rehabilitated; and

WHEREAS, Title 7 of the Bloomington Municipal Code is not currently consistent in its use of terms of description; and

WHEREAS, it is in the best interest of the community as a whole and of the animals who reside here for the City of Bloomington to do everything it can to improve standards for the humane treatment of animals, reduce overpopulation and public burden, and clarify codes as needed;

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. The title and table of contents for Title 7 of the Bloomington Municipal Code entitled “Animals” shall be deleted and replaced with the following:

Title 7

ANIMALS

Chapters:

- 7.01 Definitions
- 7.16 Commercial Animal Establishment Permits
- 7.21 Kennel Permits
- 7.22 Breeders
- 7.24 Restraint
- 7.28 Nuisance
- 7.32 Impoundment
- 7.36 Animal Care
- 7.40 Wild Animals
- 7.42 Reptiles
- 7.44 Rabies
- 7.48 Adopted Animals
- 7.52 General Provisions

SECTION 2. Chapter 7.01 of the Bloomington Municipal Code entitled “Definitions” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.01

DEFINITIONS

Sections:

7.01.010 Definition of terms.

7.01.010 Definition of terms.

As used in this title, the following terms mean, unless otherwise designated:

“Abandoned Animal” means any animal whose owner/guardian has knowingly, intentionally or recklessly left it unattended, without proper food, water or shelter, for twenty-four (24) hours or more.

"Altered animal" means any animal which has been spayed or neutered.

"Animal" means any live, nonhuman vertebrate creature, domestic or wild.

“Animal Exhibition - Permanent” means any spectacle, display, act or event other than circuses, in which animals perform or are displayed, with the exception of education programs presented by persons or organizations with proper state and federal education permits, as required, and which are perpetual in nature and in a stationary location.

“Animal Exhibition - Transient” means any spectacle, display, act or event other than circuses, in which animals perform or are displayed, with the exception of education programs presented by persons or organizations with proper state and federal education permits, as required, and which are traveling shows of a temporary duration.

"At large animal" means a stray animal or any animal whose owner/guardian knowingly, intentionally, or recklessly allows the animal to stray beyond premises owned, lawfully occupied or controlled by the owner/guardian unless under restraint. This section does not apply to dogs engaged in lawful hunting accompanied by the owner/guardian or custodian.

"Auctions" means any place or facility where domestic livestock are regularly bought, sold, or traded, except for those facilities otherwise defined in this chapter.

"Circus" means a commercial variety show featuring animal acts for public entertainment.

"Commercial animal establishment" means any major and/or minor petshop, non-municipal animal shelter/sanctuary, auction, riding school or stable, zoological park, circus or animal exhibition.

"Commercial kennel" means any person engaged in owning or harboring more than four (4) dogs and cats over the age of six (6) months, any one (1) of which is unaltered; or engaged in the business of boarding, training for a fee and/or grooming animals.

“Domestic Livestock” means any animal, other than a domestic pet, that is a member of one (1) of the following species:

- bison;
- elk;
- poultry;
- cattle;
- donkey;
- horse;
- goat;
- llama;
- mule;
- ostrich;
- pig; or
- sheep.

"Domestic pet" means any animal that is a member of one (1) of the following species:

- dog (*Canis familiaris*)
- cat (*Felis catus* or *Felis domesticus*)
- rabbit (*Oryctolagus cuniculus*)
- mouse (*Mus musculus*)
- rat (*Rattus rattus*)
- reptile (*Reptilis*) as defined herein
- guinea pig (*Cavia porcellus*)
- chinchilla (*Chinchilla laniger*)

hamster (*Mesocricetus auratus*)
gerbil (*Gerbillus gerbillus*)
ferret (*Mustela putorius furo*)

“Exotic Animal” means an animal belonging to a species that is not native to the United States, or an animal that is a hybrid or cross between a domestic animal and an animal that is not native to the United States.

“Feral Cat” means a cat that has lived its life with little or no human contact, is not socialized and has reverted to a wild state.

“Feral Cat Colony” means a group of more than six (6) altered feral cats owned or harbored by a person who provides adequate food, water and shelter.

"Harboring" means the actions of any person that permit any animal habitually to remain or lodge or to be fed within his home, store, enclosure, yard or place of business or any premises on which such person resides or controls. An animal shall be presumed harbored if it is fed or sheltered for three (3) consecutive days.

"Major breeder" means any person who intentionally or unintentionally causes or allows the breeding of more than one (1) litter of dogs or cats in a twelve (12) month period, or makes more than one (1) cat or dog available for breeding purposes in a twelve (12) month period; or any person who offers for sale, sells, trades, receives any compensation or gives away more than one (1) litter of dogs or cats in a twelve (12) month period, with the exception of a litter of dogs or cats taken to the animal shelter.

"Major pet shop" means any retail establishment engaging in the purchase and/or sale of cats and/or dogs, either solely or in addition to the purchase and/or sale of other species of animal.

"Minor breeder" means any person who intentionally or unintentionally causes or allows the breeding of one (1) litter of dogs or cats per twelve (12) month period, or makes one (1) dog or cat available for breeding purposes per twelve (12) month period; or any person who offers for sale, sells, trades, receives any compensation for or gives away one (1) litter of dogs or cats within a twelve (12) month period, with the exception of a litter of dogs or cats taken to the animal shelter or animals that are altered prior to being re-homed; or any person who owns one (1) or more unaltered dogs and/or cats that are found to be in violation of Section 7.24.

"Minor pet shop" means any retail establishment engaging in the purchase and sale of any species of animal, with the exception of cats and dogs.

"Municipal Animal shelter" means any facility operated by a municipal agency, or its authorized agents for the purpose of impounding or caring for animals held under the authority of this title or of state law.

"Noncommercial kennel" means any person engaged in owning or harboring, with the exception of dogs and/or cats fostered for the City of Bloomington Animal Care & Control Department, more than four (4) altered dogs; more than six (6) altered cats; or more than a total of ten (10) altered dogs and cats combined.

“Non-Municipal Animal Shelter/Sanctuary” means any facility operated by a person or organization other than a municipality for the purpose of harboring and/or re-homing animals.

“Owner/Guardian” means a person owning or harboring one (1) or more animals for a period of longer than twenty-one (21) days.

"Person" means any individual, firm, association, joint stock company, syndicate, partnership, or corporation.

“Potentially Dangerous” means any of the following:

- (1) Any animal which, when unprovoked, on two (2) separate occasions within the prior thirty-six (36) month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the animal are off of property owned, lawfully occupied or controlled by the owner/guardian or keeper of the animal.
- (2) Any animal which, when unprovoked, bites a person causing an injury that is not a severe injury as defined below.
- (3) Any animal which, when unprovoked and off of property owned, lawfully occupied or controlled by the owner/guardian or keeper of the animal, on two (2) separate occasions within the prior thirty-six (36) month period, has bitten or otherwise caused injury to a domestic animal that is not a severe injury as defined below.

"Public nuisance" means any animal or animals that:

- (1) Molest passersby or passing vehicles;
- (2) Attack other animals;
- (3) Damage public property or private property;
- (4) Bark, whine or howl in an excessive or continuous fashion;

- (5) Defecate on public or private property, other than the owner/guardian's/harbinger's property, unless the waste is immediately removed and disposed of in a sanitary manner by the animal's owner/guardian/harbinger; or
- (6) Otherwise interferes with the free use and comfortable enjoyment of life or property.

"Reptile" means any air-breathing vertebrate of the class Reptilia, with the exception of:

- (1) Any reptile on the Federal Endangered or Threatened Species list or on the Convention or International Trade in Endangered Species List;
- (2) Any venomous reptile, including front- or rear-fanged reptiles;
- (3) Any python of a species which naturally exceeds twelve feet in length;
- (4) All crocodylians, including alligators, caimans, and crocodiles;
- (5) Monitor lizards;
- (6) Anacondas;
- (7) Any reptile of a species native to Indiana; or
- (8) Any reptile protected by state or federal law.

"Research laboratory" means any animal research facility registered with the United States Department of Agriculture under authority of the Federal Laboratory Animal Welfare Act, 71 United States Code Section 2132 et seq.

"Restraint" means the securing of an animal by a leash or lead or confining it within the real property limits of property owned, lawfully occupied or controlled by its owner/guardian.

"Riding school or stable" means any place that has available for hire, boarding, and/or riding instruction, any horse, pony, donkey, mule or burro.

"Service dogs" means any dog engaged in working or training to work for the assistance of hearing or sight impaired, or physically handicapped or disabled persons.

"Severe injury" means any physical injury to a human being or domestic pet or domestic livestock that results in multiple bites, broken bones, muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

"Stray" means any animal that does not appear, upon reasonable inquiry, to have an owner/guardian.

"Tether" means attaching a domestic pet to a stationary object or pulley run by means of a chain, rope, tether, cable, or similar restraint. "Tether" does not include the use of a leash to walk a domestic pet.

"Trap-Neuter-Return" means a full management plan in which feral cats already living outdoors are humanely trapped, then evaluated, vaccinated, sterilized and eartipped by veterinarians. Kittens under 10 weeks old are adopted into good homes if they become socialized. Healthy adult cats too wild to be adopted are returned to their familiar habitat under the lifelong care of volunteers.

"Veterinary hospital" means any establishment maintained and operated by a veterinarian for surgery, diagnosis, and treatment of diseases and injuries of animals.

"Vicious animal" means any of the following:

- (1) Any animal which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being or domestic pet.
- (2) Any animal previously determined to be and currently listed as a potentially dangerous animal which, after its owner/guardian or keeper has been notified of this determination, continues the potentially dangerous behavior as defined herein or is maintained in violation of Chapter 7.24.

"Wild animals" means any animal not a domestic animal, with the exception of small, nonpoisonous aquatic or amphibious animals and birds of the order Psittaciformes, canaries, and finches.

"Wildlife rehabilitator" means any person or persons that acquire the necessary state and federal permits to allow the rehabilitation of wildlife in their homes, on their property or in a professional facility, with the intent of releasing such animals according to state and federal guidelines.

"Zoological park" means any facility, other than a pet shop or kennel, displaying or exhibiting, without the predominant purpose of selling, one (1) or more species of non-domesticated animals. The facility must be accredited by the American Zoological Association (AZA) or The Association of Sanctuaries (TAOS).

(Ord. 99-39 §§ 1--14, 1999; Ord. 98-27 §§ 1, 2, 3, 1998; Ord. 85-23 § 1, 1985; Ord. 78-20 § 1, 1978; Ord. 76-14 § 1 (part), 1976).

SECTION 3. Chapter 7.12 of the Bloomington Municipal Code entitled "Licensing" shall be deleted in its entirety.

SECTION 4. Chapter 7.16 of the Bloomington Municipal Code entitled “Commercial Animal Establishment Permits” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.16

COMMERCIAL ANIMAL ESTABLISHMENT PERMITS

Sections:

- 7.16.010 Permits--General.
- 7.16.020 Inspection of animals and premises authorized.
- 7.16.030 Obtaining a permit.
- 7.16.040 Standards for commercial animal establishments.
- 7.16.050 Commercial animal establishment permit period.
- 7.16.060 Fees.
- 7.16.070 Reclassification.
- 7.16.080 Violations.

7.16.010 Permits--General.

No person shall operate a commercial animal establishment, or non-municipal animal shelter/sanctuary, except for the City of Bloomington Animal Shelter, without first obtaining a permit in compliance with this chapter. Every facility regulated by this chapter shall be considered a separate enterprise and shall require an individual permit. (Ord. 99-39 § 19, 1999; Ord. 77-74 § 2 (part), 1977).

7.16.020 Inspection of animals and premises authorized.

It shall be a condition to the issuance of any permit required by this chapter that:

- (a) The senior and staff animal control officers of the City and/or their designees shall be permitted to inspect the premises and all animals located thereon where such animals are harbored.
- (b) All reports of such inspection shall be in writing and maintained by the senior animal control officer.
- (c) The senior animal control officer, staff animal control officers, and/or their designees are authorized to enter the structure or premises wherein a commercial animal establishment is maintained (or believed to be maintained) at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures.
- (d) If the owner or those in possession of a structure or premises wherein a commercial animal establishment is maintained (or believed to be maintained) refuse inspection of said establishment, the senior animal control officer, staff animal control officers, and/or their designees may obtain an inspection warrant from any court of record in the county in which the establishment is located in order to determine if the establishment is maintained in accordance with the Animal Title of the Bloomington Municipal Code.

(Ord. 81-101 § 1 (part), 1981; Ord. 77-74 § 2 (part), 1977).

7.16.030 Obtaining a permit.

Applicants must apply for permits required by this chapter with the City of Bloomington Animal Care and Control Department.

- (a) The application must contain:
 - (1) information as to whether the applicant has been convicted of cruelty to animals;
 - (2) a statement that the applicant complies and will comply with the regulations promulgated under authority of Section 17.08.020 of this code; and,
 - (3) that the applicant authorizes the senior and staff animal control officers or their designees to inspect the applicant’s facilities and animals.
- (b) The permit shall be issued when the applicant complies with the laws and regulations pertaining to the issuance of permits, and pays the fee required.
- (c) If the applicant withholds or falsifies any information on the application, the permit shall not be issued, and any permit issued upon false or withheld information shall be revoked.
- (d) No permit to operate a commercial animal establishment shall be issued to an applicant who has been convicted of cruelty to animals without review by the Animal Control Commission. (Ord. 81-101 §§ 1 (part), 2 (part), 1981; Ord. 77-74 § 2 (part), 1977).

7.16.040 Standards for commercial animal establishments.

In order to be eligible to obtain a permit, a commercial animal establishment must:

- (a) Be operated in such a manner as not to constitute a public nuisance;
- (b) Provide an isolation area for animals which are sick or diseased to be sufficiently removed so as not to endanger the health of other animals;
- (c) Keep all animals caged, within a secure enclosure or under the control of the owner/guardian or operator at all times;
- (d) With respect to all animals kept on the premises, comply with all of the provisions of this title providing for the general care of animals;
- (e) Not sell animals which are unweaned or obviously diseased.
- (f) Be in compliance with all zoning laws. (Ord. 77-74 § 2 (part), 1977).

7.16.050 Commercial animal establishment permit period.

The commercial animal establishment permit period shall begin on January 1st and shall run for one (1) year. Applicants requiring a permit during the year shall pay a prorated fee for the remaining portion of the year. Applications must be made prior to the establishment of a commercial animal establishment. (Ord. 99-39 § 20, 1999; Ord. 77-74 § 2 (part), 1977).

7.16.060 Fees.

- (a) Fees for permits shall be as follows:
 - (1) For each riding school or stable \$100.00;
 - (2) For each auction \$500.00;
 - (3) For each zoological park \$500.00;
 - (4) For each circus or animal exhibition – transient \$1,000.00 per day;
 - (5) For each animal exhibition – permanent \$500.00 per year
 - (6) For each minor pet shop \$250.00;
 - (7) For each major pet shop \$500.00.
 - (8) For each non-municipal animal shelter/sanctuary: \$0.00 private/\$0.00 non-profit
- (b) No fee shall be required of any municipal animal shelter, research laboratory, or government-operated zoological park. (Ord. 99-39 §§ 21, 22, 1999; Ord. 77-74 § 2 (part), 1977).

7.16.070 Reclassification.

Any person who has a change in the category under which the commercial animal establishment permit was issued shall report the change to the City of Bloomington Animal Care and Control Department and apply for the new permit required within thirty (30) days. Appropriate changes, including pro rata credit for the previous permit, shall be made by the City. (Ord. 99-39 § 23, 1999; Ord. 77-74 § 2 (part), 1977).

7.16.080 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in sub-section (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (b) Persons who violate any provision of this chapter shall be subject to a fine of double the permit fee for the first offense, with the fine for each subsequent offense of this chapter increasing by an increment of double the permit fee. In the event that the animal establishment permit does not require a fee, the fine for a first offense shall be twenty-five dollars (\$25.00), with the fine for each subsequent offense of this chapter increasing by an increment of fifty dollars (\$50.00).
- (c) In the event the person has no additional violations of this chapter for a period of twelve (12) consecutive months, the fine for any violation of this chapter after that period shall be double the permit fee for the first offense, with the fine for each subsequent offense increasing by an increment of double the permit fee. In the event that the animal establishment permit does not require a fee, the fine for a first offense shall be twenty-five dollars (\$25.00), with the fine for each subsequent offense of this chapter increasing by an increment of fifty dollars (\$50.00). (Ord. 99-39 § 24, 1999; Ord. 81-101 § 3 (part), 1981; Ord. 77-74 § 2 (part), 1977).

SECTION 5. Chapter 7.21 of the Bloomington Municipal Code entitled “Kennel Permits” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.21

KENNEL PERMITS

Sections:

- 7.21.010 Kennel permits required.
- 7.21.020 Obtaining non-commercial kennel permits.
- 7.21.025 Obtaining commercial kennel permits.
- 7.21.026 Obtaining feral cat colony permits
- 7.21.030 Inspection.
- 7.21.040 Standards for non-commercial kennels.
- 7.21.050 Standards for commercial kennels.
- 7.21.055 Standards for feral cat colonies
- 7.21.060 Kennel permit periods.
- 7.21.070 Fees.
- 7.21.080 Reclassification.
- 7.21.090 Violations.

7.21.010 Kennel permits required.

- (a) No person shall operate a commercial or non-commercial kennel or feral cat colony without first obtaining a permit from the City of Bloomington Animal Care and Control Department in accordance with this chapter.
- (b) No permit shall be issued unless the proposed operation is in compliance with all zoning laws. (Ord. 99-39 §§ 26 (part), 27, 1999).

7.21.020 Obtaining non-commercial kennel permits.

Applications for non-commercial kennel permits shall be made to the City of Bloomington Animal Care and Control Department.

- (a) The application for a non-commercial kennel permit shall include:
 - (1) the name, address, and telephone number of the applicant;
 - (2) the description (species, breed, sex, age and coloration) of and proof of rabies vaccination for each animal to be housed in the kennel; and,
 - (3) a statement as to whether the applicant has ever been convicted of the offense of cruelty to animals.
- (b) If the applicant withholds or falsifies any information on the application, no permit shall be issued and any permit previously issued on false or withheld information shall be revoked.
- (c) No person previously convicted of cruelty to animals shall be issued a kennel permit without prior review by the Animal Control Commission. (Ord. 99-39 §§ 26 (part), 28, 1999).

7.21.025 Obtaining commercial kennel permits.

Applications for commercial kennel permits shall be made to the City of Bloomington Animal Care and Control Department.

- (a) The application for a commercial kennel permit shall include:
 - (1) the name, address, and telephone number of the applicant;
 - (2) a statement as to whether the applicant has ever been convicted of the offense of cruelty to animals; and,
 - (3) a statement of the total capacity of the kennels used for the purposes of Class B, Class C and Class D commercial kennel permits.
- (b) Applications for Class A commercial kennel permits must include the description (species, breed, sex, age and coloration) of each animal to be housed in the kennel.
- (c) If the applicant withholds or falsifies any information on the application, no permit shall be issued and any permit previously issued on false or withheld information shall be revoked.
- (d) No person previously convicted of cruelty to animals shall be issued a kennel permit without prior review by the Animal Control Commission. (Ord. 99-39 §§ 26 (part), 29, 1999).

7.21.026 Obtaining feral cat colony permits

Applications for feral cat colony permits shall be made to the City of Bloomington Animal Care and Control Department.

- (a) The application for a feral cat colony permit shall include:
 - (1) the name, address, and telephone number of the applicant;
 - (2) the description (breed, sex, age and coloration) of and proof of rabies vaccination for each cat to be housed in the colony; and,
 - (3) a statement as to whether the applicant has ever been convicted of the offense of cruelty to animals.
- (b) If the applicant withholds or falsifies any information on the application, no permit shall be issued and any permit previously issued on false or withheld information shall be revoked.
- (c) No person previously convicted of cruelty to animals shall be issued a feral cat colony permit without prior review by the Animal Control Commission. (Ord. 99-39 §§ 26 (part), 28, 1999).

7.21.030 Inspection.

It shall be a condition to the issuance of any permit required by this chapter that:

- (a) The senior and staff animal control officers of the City and/or their designees shall be permitted to inspect the structure and/or premises wherein a kennel or colony is maintained (or believed to be maintained) and all animals located thereon where such animals are harbored.
- (b) All reports of such inspections shall be in writing and maintained by the senior animal control officer.
- (c) The senior animal control officer, staff animal control officers, and/or their designees are authorized to enter the structure or premises wherein a kennel or colony is maintained (or believed to be maintained) at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures.
- (d) If the owner or those in possession of a structure or premises wherein a kennel or colony is maintained (or believed to be maintained) refuse inspection of said kennel or colony, the senior animal control officer, staff animal control officers, and/or their designees may obtain an inspection warrant from any court of record in the county in which the kennel or colony is located in order to determine if the kennel or colony is maintained in accordance with the Animal Title of the Bloomington Municipal Code.

(Ord. 99-39 §§ 26 (part), 30, 1999).

7.21.040 Standards for non-commercial kennels.

All non-commercial kennels shall:

- (a) Operate in such a manner as to not constitute a public nuisance; and
- (b) Comply with all of the provisions of Chapter 7.36 Animal Care, which provides standards for the general care of animals. (Ord. 99-39 §§ 26 (part), 31, 1999).

7.21.050 Standards for commercial kennels.

All commercial kennels shall:

- (a) Operate in such a manner as to not constitute a public nuisance;
- (b) Comply with all of the provisions of Chapter 7.36 Animal Care, which provides for the general care of animals;
- (c) Provide an isolation area for animals which are sick or diseased to be sufficiently removed so as to not endanger the health and well being of other animals;
- (d) Keep all animals caged within a secure enclosure or under the control of the owner/guardian or representative of the kennel at all times;
- (e) Provide each animal sufficient space to stand up, lie down and turn around in a natural position without touching the sides or top of the enclosure;
- (f) Provide individual kennels for each animal being harbored for any portion of a twenty-four (24) hour period, with the exception of yard or other play areas used for the purpose of dog daycare. Kennels intended for single occupancy shall not house more than one (1) animal, with the exception of animals that are normally housed together in a home environment. (Ord. 99-39 §§ 26 (part), 32, 1999).

7.21.055 Standards for feral cat colonies

All feral cat colonies shall:

- (a) Operate in such a manner as to not constitute a public nuisance; and
- (b) Comply with all of the provisions of Chapter 7.36 Animal Care, which provides standards for the general care of animals. (Ord. 99-39 §§ 26 (part), 31, 1999).

7.21.060 Kennel permit periods.

- (a) Non-commercial kennel permits shall be valid for a period of one (1) year from the date of issuance. An application must be made within ten (10) days of the creation of a kennel.
- (b) Commercial kennel permits shall be valid for one (1) year beginning January 1st of each year. Applicants requiring a commercial kennel permit during the year shall pay a prorated fee for the remaining portion of the current year. An application must be made prior to the creation of a kennel.
- (c) Feral cat colony permits shall be valid for a period of one (1) year from the date of issuance. An application must be made prior to the creation of a colony. (Ord. 99-39 §§ 26 (part), 33, 1999).

7.21.070 Fees.

- (a) The fee for non-commercial kennel permits shall be:
 - (1) More than 4 altered dogs \$25.00; or
 - (2) More than 6 altered cats \$25.00; or
 - (3) More than a total of 10 altered dogs & cats combined \$25.00; or
 - (4) More than a total of 14 altered dogs & cats combined \$50.00; and
 - (5) Additional altered dogs & cats combined in increments of 4 \$50.00, plus \$25.00 per additional increment
- (b) The fee for commercial kennel permits shall be:
 - (1) Class A, owning:
 - (A) 5-8 animals \$100.00
 - (B) 9-12 animals \$150.00
 - (C) additional animals in increments of 4 \$150.00, plus \$50.00 per additional increment
 - (2) Class B, boarding:
 - (A) 1-25 kennels \$100.00
 - (B) 26-50 kennels \$250.00
 - (C) additional kennels in increments of 25 \$250.00, plus \$200.00 per additional increment
 - (3) Class C, training \$75.00
 - (4) Class D, grooming \$50.00
- (c) The fee for feral cat colonies shall be \$0.00
- (d) No fee shall be required of any veterinary hospital or municipal animal shelter, research laboratory or government operated zoological park.
- (e) Persons whose establishments operate under more than one (1) class as defined by this chapter shall be required to apply for a permit for each applicable class. (Ord. 99-39 §§ 26 (part), 34, 1999).

7.21.080 Reclassification.

Any person or business who has a change in class under which the commercial and/or non-commercial kennel permit was issued shall report the change to the City of Bloomington Animal Care and Control Department and apply for a new permit within thirty (30) days of any such change. (Ord. 99-39 §§ 26 (part), 35, 1999).

7.21.090 Violations.

- (a) Any animal control officer may issue any person or business in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) shall be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours of the notice of ordinance violation. In the event that such payment is not made within seventy-two (72) hours, the City may file a proceeding in the county court of competent jurisdiction to collect the applicable penalty.
- (b) Persons or businesses who violate any provision of this chapter shall be subject to a fine of double the applicable permit fee for the first offense, with the fine for each subsequent offense of this chapter increasing by an increment of double the permit fee. In the event

that the kennel permit does not require a fee, the fine for a first offense shall be twenty-five dollars (\$25.00), with the fine for each subsequent offense of this chapter increasing by an increment of fifty dollars (\$50.00).

- (c) In the event that the person or business has no additional violations of this chapter for a period of twelve (12) consecutive months, the fine for any violation of this chapter after that period shall be double the applicable permit fee for the first offense, with the fine for each subsequent offense increasing by an increment of double the applicable permit fee. In the event that the kennel permit does not require a fee, the fine for a first offense shall be twenty-five dollars (\$25.00), with the fine for each subsequent offense of this chapter increasing by an increment of fifty dollars (\$50.00). (Ord. 99-39 §§ 26 (part), 36, 1999).

SECTION 6. Chapter 7.22 of the Bloomington Municipal Code entitled “Breeders” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.22

BREEDERS

Sections:

- 7.22.010 Minor breeder permit required.
- 7.22.020 Major breeder permit required.
- 7.22.030 Obtaining breeder permits.
- 7.22.040 Inspection.
- 7.22.050 Breeder permit periods.
- 7.22.060 Fees.
- 7.22.070 Reclassification.
- 7.22.080 Violations.

7.22.010 Minor breeder permit required.

No person or business shall be a minor breeder without obtaining a permit in compliance with this chapter.

(a) Minor breeders shall:

- (1) Breed only one (1) dog or one (1) cat which results in the birthing of a maximum of one (1) litter in a twelve (12) month period;
- (2) Not offer for sale, sell, trade, receive any compensation for or give away more than one (1) litter of dogs or one (1) litter of cats in a twelve (12) month period;
- (3) Keep records for the duration of the permit as to the birth of each litter of dogs or cats as may be required by the City of Bloomington Animal Care and Control Department;
- (4) Keep records of the name, address and telephone number of each buyer or new owner/guardian of any dog or cat sold or transferred;
- (5) Furnish to each buyer or new owner/guardian of an animal the minor breeder permit number of the minor breeder in order that the new owner/guardian has proof and assurance that the animal was legally bred;
- (6) Not offer a puppy or kitten under the age of eight (8) weeks of age for sale, trade, or other compensation or free giveaway, with the exception of animals taken to the animal shelter;
- (7) Recommend that any animal sold, transferred or given away be examined by a licensed veterinarian within one (1) week of the date of transfer and notify the new owner/guardian of state requirements for rabies vaccinations; and
- (8) List the person’s or business’s minor breeder permit number on all public notices advertising the sale or free giveaway of litters of or individual puppies or kittens.

- (b) Any owner/guardian or person having custody of a dog or cat which has been altered within fourteen (14) weeks after giving birth to a litter or who relinquishes the adult dog or cat and the litter to the animal shelter within fourteen (14) weeks of the birth date of the litter shall have all permit requirements waived. (Ord. 99-39 §§ 37 (part), 38, 1999).

7.22.020 Major breeder permit required.

No person or business shall be a major breeder without obtaining a permit in compliance with this chapter.

Major breeders shall:

- (a) Not allow the birthing of more than one (1) litter per female dog or cat in a twelve (12) month period;
- (b) Keep records for twelve (12) months as to the birth of each litter of dogs or cats as may be required by the City of Bloomington Animal Care and Control Department;
- (c) Keep records for twenty-four (24) months of the name, address and telephone number of each buyer or new owner/guardian of any dog or cat sold or transferred;
- (d) Furnish to each buyer or new owner/guardian of an animal the major breeder permit number of the major breeder in order that the new owner/guardian has proof and assurance that the animal was legally bred;
- (e) Not offer a puppy or kitten under the age of eight (8) weeks of age for sale, trade, or other compensation or free giveaway, with the exception of animals taken to the animal shelter;
- (f) Recommend that any animal sold, transferred or given away be examined by a licensed veterinarian within one (1) week of the date of transfer and notify the new owner/guardian of state requirements for rabies vaccinations; and
- (g) List the person's or business's major breeder permit number on all public notices advertising the sale or free giveaway of litters of or individual puppies or kittens. (Ord. 99-39 §§ 37 (part), 39, 1999).

7.22.030 Obtaining breeder permits.

Applications for minor and major breeder permits shall be made to the City of Bloomington Animal Care and Control Department.

- (a) The application shall include:
 - (1) the name, address and telephone number of the applicant;
 - (2) a statement as to whether the applicant has ever been convicted of the offense of cruelty to animals; and,
 - (3) descriptions (species, breed, sex, age, coloration) of each animal under the permit.
- (b) If the applicant withholds or falsifies any information on the application, no permit shall be issued and any permit previously issued on false or withheld information shall be revoked.
- (c) No person previously convicted of cruelty to animals shall be issued a kennel permit without prior review by the Animal Control Commission.
- (d) An owner/guardian must apply for a minor or major breeder permit within twenty-one (21) days of the birthing of a litter or upon receiving a citation for failure to restrain their unaltered animal. (Ord. 99-39 §§ 37 (part), 40, 1999).

7.22.040 Inspection.

It shall be a condition to the issuance of any permit required by this chapter that:

- (a) The senior and staff animal control officers of the City and/or their designees shall be permitted to inspect the structure or premises wherein an establishment regulated under this chapter is maintained (or believed to be maintained) and all animals located thereon where such animals are harbored.
- (b) All reports of such inspections shall be in writing and maintained by the senior animal control officer.
- (c) The senior animal control officer, staff animal control officers, and/or their designees are authorized to enter the structure or premises wherein an establishment regulated under this chapter is maintained (or believed to be maintained) at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures.
- (d) If the owner or those in possession of a structure or premises wherein an establishment regulated under this chapter is maintained (or believed to be maintained) refuse inspection of said establishment, the senior animal control officer, staff animal control officers, and/or their designees may obtain an inspection warrant from any court of record in the county in which the establishment is located in order to determine if the establishment is maintained in accordance with the Animal Title of the Bloomington Municipal Code. (Ord. 99-39 §§ 37 (part), 41, 1999).

7.22.050 Breeder permit periods.

- (a) Minor breeder permits shall be valid for a period of one (1) year from the date of issuance.
- (b) Major breeder permits shall be issued on a litter by litter basis and shall be valid for one (1) year from the date of application. (Ord. 99-39 §§ 37 (part), 42, 1999).

7.22.060 Fees.

Fees for breeder permits shall be:

- (a) Minor breeder permit \$100.00
 - (b) Minor breeder permit for each unrestrained unaltered animal \$100.00
 - (c) Major breeder permit \$150.00 per litter
- (Ord. 99-39 §§ 37 (part), 43, 1999).

7.22.070 Reclassification.

Any person or business who has a change in the category under which the minor or major breeder permit was issued shall report the change to the City of Bloomington Animal Care and Control Department and apply for a new permit within thirty (30) days of any such change. (Ord. 99-39 §§ 37 (part), 44, 1999).

7.22.080 Violations.

- (a) Any animal control officer may issue any person or business in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) shall be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours of the notice of ordinance violation. In the event that such payment is not made within seventy-two (72) hours, the City may file a proceeding in the county court of competent jurisdiction to collect the applicable penalty.
- (b) Persons or businesses who violate any provision of this chapter shall be subject to a fine of double the applicable permit fee for the first offense, with the fine for each subsequent offense of this chapter increasing by an increment of double the permit fee.
- (c) In the event that the person or business has no additional violations of this chapter for a period of twelve (12) consecutive months, the fine for any violation of this chapter after that period shall be double the applicable permit fee for the first offense, with the fine for each subsequent offense increasing by an increment of double the applicable permit fee. (Ord. 99-39 §§ 37 (part), 45, 1999).

SECTION 7. Chapter 7.24 of the Bloomington Municipal Code entitled “Restraint” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.24

RESTRAINT

Sections:

- 7.24.010 General requirements.
- 7.24.020 Animals in heat.
- 7.24.030 Vicious animals.
- 7.24.040 Violations.

7.24.010 General requirements.

All animals except cats which have been neutered or spayed and are wearing identification or are ear tipped in the case of feral cats shall be kept under restraint. However, altered cats not kept under restraint at all times are still subject to Public Nuisance laws cited in Chapter 7.28. (Ord. 77-74 § 4 (part), 1977).

7.24.020 Animals in heat.

Every female animal in heat shall be confined in a building or secure enclosure in such a manner that the animal cannot come into contact with a male animal of the same species except for planned breeding. (Ord. 77-74 § 4 (part), 1977).

7.24.030 Vicious animals.

- (a) If an animal control officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that an animal is potentially dangerous or vicious, the animal control officer shall request a hearing by the Animal Control Commission for the purpose of determining whether or not the animal in question should be declared potentially dangerous or vicious.
 - (1) Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for finding probable cause shall be sworn to and verified by the complainant and shall be provided to the Animal Control Commission.
 - (2) The hearing will be held at the next regularly scheduled meeting of the Animal Control Commission and shall be open to the public.
 - (3) The owner/guardian of the animal shall be served with notice of the hearing and a copy of any complaints received by certified mail or in person.
 - (4) The animal control officer shall notify the owner/guardian of the animal of the date and time of such hearing, at which time he or she may present evidence as to why the animal should not be declared potentially dangerous or vicious.
 - (A) Such evidence may include eyewitness testimony of the incident; or
 - (B) Evidence that the action of the animal and the damage sustained by the person or other animal could have reasonably been expected to occur given the circumstances of the event. Such circumstances may include, but are not limited to: willful trespass upon the owner/guardian's property; teasing, tormenting, abusing or assaulting the animal; and/or attempted abuse or assault upon the owner/guardian.
 - (5) The Animal Control Commission may consider all relevant evidence, including incident reports, affidavits of witnesses, and whether the incident reasonably indicates whether or not the animal in question is potentially dangerous and/or vicious in ordinary circumstances where the average person could not reasonably be expected to foresee and take measures to prevent injury.
 - (6) The Animal Control Commission may decide all issues for or against the owner/guardian of the animal even if the owner/guardian of the animal fails to appear at the hearing.
 - (7) After the hearing, the owner/guardian of the animal shall be notified in writing of the determination by certified mail or in person.
 - (A) If a determination is made that the animal is potentially dangerous or vicious, the owner/guardian shall comply with this section's requirements for restraint in accordance with a time schedule established by the Animal Control Commission but in no case more than thirty (30) days after the date of the determination.
 - (B) An animal determined to be vicious may be destroyed by the City of Bloomington Animal Care and Control Department when it is found by the Animal Control Commission that the release of the animal would create a significant threat to the public health, safety, and welfare.
 - (C) If it is determined that an animal found to be vicious shall not be destroyed, the Animal Control Commission may impose reasonable conditions upon the ownership of the animal that protect the public health, safety and welfare.
 - (D) Decisions of the Animal Control Commission are final.
- (b) If upon investigation it is determined by the animal control officer or law enforcement officer that probable cause exists to believe the animal in question poses an immediate threat to public safety, then the animal control officer or law enforcement officer may seize and impound the animal pending the hearing to be held pursuant to this section. The owner/guardian of the animal shall be liable to the City of Bloomington Animal Shelter where the dog is impounded for the costs and expenses of keeping the animal, if the animal is later declared potentially dangerous or vicious.
- (c) A potentially dangerous animal, while on the owner/guardian's property, shall, at all times, be kept indoors, or in a secured enclosure from which the animal cannot escape, and into which children cannot trespass. A potentially dangerous animal may be off the owner/guardian's premises only if it is restrained by a substantial leash, of appropriate length, and if it is under the control of an adult.
- (d) An animal that has been declared vicious may not be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own

volition except to a secured enclosure. When outside, all vicious animals must be confined in a secure enclosure, except when necessary to obtain veterinary care.

- (1) All such enclosures must be adequately lighted and ventilated and kept in a clean and sanitary condition.
 - (2) The enclosure shall have secure sides and a secure top and bottom to prevent the animal from escaping over, under, or through the structure.
 - (3) The enclosure shall be kept locked at all times to prevent unintentional opening.
 - (4) The enclosure shall include suitable shelter and protection from the elements, and shall provide adequate exercise room, light, ventilation, and sanitation.
 - (5) The enclosure shall be approved by the City of Bloomington Animal Care and Control Department prior to its usage for confinement.
 - (6) Whenever necessity requires a vicious animal to be outside of the enclosure, the animal shall be securely muzzled and restrained by a leash not exceeding three (3) feet in length, with handgrip, and shall be under the direct control and supervision of the owner/guardian of the animal.
- (e) The owner/guardian of a potentially dangerous or vicious animal shall display clearly visible warning signs on all entry points to the premises on which the animal is maintained warning that a potentially dangerous or vicious animal is being harbored on such property. In addition, at least one sign shall be posted on the enclosure in which the animal is maintained. Signs must inform both children and adults of the presence of a potentially dangerous or vicious animal on the property.
- (f) Any animal classified as potentially dangerous or vicious shall not be used for breeding and shall be altered by a licensed veterinarian within thirty 30 days of such classification unless:
- (1) A licensed veterinarian certifies in writing that the animal is incapable of reproduction; or
 - (2) A licensed veterinarian certifies in writing that altering the animal would be injurious to the animal's health, provided, however, that if the health condition of the animal is of a temporary nature, then the animal shall be altered immediately after the health condition has been corrected.
- (g) If the animal in question dies, or is sold or transferred, the owner/guardian shall notify the City of Bloomington Animal Care and Control Department of the changed condition and new location of the animal in writing within two (2) working days.
- (h) An owner/guardian may submit one Request for Reconsideration per year to the Animal Control Commission to have the designation of potentially dangerous or vicious removed from his/her animal.
- (1) The application must be in writing.
 - (2) The application must be given to the City of Bloomington Animal Care and Control Department.
 - (3) The application shall include detailed information about how the change in circumstances or measures taken by the owner/guardian, such as training of the animal, have mitigated the risk to public safety.
 - (4) The Animal Control Commission may hear evidence, both pro and con, as to whether and why the designation should or should not be removed.
 - (5) The Animal Control Commission may make a decision to remove or not to remove such designation.

(Ord. 99-39 § 46, 1999; Ord. 81-101 § 1 (part), 1981; Ord. 77-74 § 4 (part), 1977).

7.24.040 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (b) Persons who violate any provision of this chapter shall be subject to the following fine:
- (1) Failure to restrain, first offense, altered animal \$20.00
Fines for each subsequent offense within twelve (12) consecutive months of first offense increase in increments of \$20.00 per offense.
 - (2) Failure to restrain, first offense, unaltered animal \$40.00
Fines for each subsequent offense within twelve (12) consecutive months of first offense increase in increments of \$40.00 per offense.

- (3) Failure to restrain female animal in heat, first offense \$100.00
Fines for each subsequent offense within twelve (12) consecutive months of first offense are \$150.00 per offense.
- (4) Failure to restrain vicious animal or potentially dangerous animal, first offense \$100.00
Fines for each subsequent offense within twelve (12) consecutive months of first offense are \$150.00 per offense
- (5) Failure to post warning signs for potentially dangerous and/or vicious animals \$50.00
- (6) Failure to notify City of Bloomington Animal Care and Control Department of change of status for potentially dangerous and/or vicious animals \$50.00
- (7) Failure to prevent potentially dangerous and/or vicious animal from breeding \$100.00
- (8) Failure to alter potentially dangerous and/or vicious animal within thirty (30) days of such classification \$100.00
- (9) Failure to comply with any portion of Chapter 7.24, not previously addressed in sections one (1) through eight (8), shall result in a \$100.00 fine.

(Ord. 99-39 § 47, 1999; Ord. 94-13 § 2, 1994; Ord. 81-101 § 3 (part), 1981; Ord. 77-74 § 4 (part), 1977).

SECTION 8. Chapter 7.28 of the Bloomington Municipal Code entitled “Nuisance” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.28

NUISANCE

Sections:

7.28.010 Public nuisance prohibited.

7.28.020 Violations.

7.28.010 Public nuisance prohibited.

No owner/guardian shall fail to exercise due care and control of his animals to prevent them from becoming a public nuisance. (Ord. 81-101 § 7 (part), 1981; Ord. 76-14 § 1 (part), 1976).

7.28.020 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in sub-section (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (b) Persons who violate any provision of this chapter shall be subject to a fine of fifty dollars (\$50.00) for the first offense, with the fine of each subsequent offense of this chapter increasing by an increment of fifty dollars (\$50.00).
- (c) In the event the person has no additional violations of this chapter for a period of twelve (12) consecutive months, the fine for any violation of this chapter after that period shall be fifty dollars (\$50.00) for the first offense, with the fine for each subsequent offense increasing by an increment of fifty dollars (\$50.00). (Ord. 99-39 § 48, 1999; Ord. 81-101 § 7 (part), 1981).

SECTION 9. Chapter 7.32 of the Bloomington Municipal Code entitled “Impoundment” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.32

IMPOUNDMENT

Sections:

- 7.32.010 Animals to be impounded.
- 7.32.020 Jurisdiction of animal control officer for impoundment.
- 7.32.030 Notice of impoundment.
- 7.32.040 Impounded animals-- Reclamation.

7.32.010 Animals to be impounded.

- (a) At-large animals (with the exception of altered cats that are wearing identification or are ear tipped in the case of feral cats and are not a public nuisance), nuisance animals, animals suspected of being neglected, subjected to cruelty or abandoned, and animals which have bitten persons or other animals may be taken by law enforcement or animal control officers and impounded in the City of Bloomington Animal Shelter.
- (b) In lieu of impounding an animal which is at large or a public nuisance according to this title, the law enforcement officer or animal control officer may issue to the known owner/guardian of such animal a notice of ordinance violation and may return the animal to the owner/guardian’s property if the animal can be secured safely. (Ord. 99-39 § 49, 1999; Ord. 81-101 §§ 1 (part), 8, 1981; Ord. 77-74 § 5 (part), 1977).

7.32.020 Jurisdiction of animal control officer for impoundment.

The jurisdiction of animal control officers for purposes of enforcing this chapter shall include, in addition to the municipality of Bloomington itself, all land within four (4) miles of its corporate limits. (Ord. 81-101 § 1 (part), 1981; Ord. 77-74 § 5 (part), 1977).

7.32.030 Notice of impoundment.

- (a) If the owner/guardian of an impounded animal can be identified, the senior animal control officer or his/her designees shall immediately upon impoundment notify the owner/guardian by telephone or mail.
- (b) Animals whose owner/guardians are not identifiable or cannot be notified after reasonable effort shall be held for five (5) calendar days from the date of impoundment, not counting officially recognized holidays, before becoming the property of the City.
- (c) Animals whose owner/guardians have been notified and who do not reclaim their animals within the five (5) day stray period shall also become the property of the City unless the owner/guardian of the animal posts a five hundred and fifty dollar (\$550.00) bond with the City Controller prior to the expiration of the five (5) day stray period to provide for the animal’s care and keeping.
 - (1) The bond must be valid for thirty (30) days.
 - (2) The owner/guardian may renew a bond by posting a new bond in the amount of six hundred dollars (\$600.00) prior to the expiration of the original bond, but may only do so once.
 - (3) If a bond expires and is not renewed, the animal becomes the property of the City.
- (d) Any stray animals found as part of a litter of two (2) or more shall become the property of the City and may be placed for adoption or humanely euthanized if not claimed by the owner/guardian within three (3) days of impoundment.
- (e) Any stray animal found with severe medical conditions and/or injuries shall be assessed by a veterinarian, whenever possible. Whenever possible, humane care will be provided in order to allow the animal to remain comfortable for the duration of the stray period. However, when an animal’s injuries or illnesses are so severe such that the animal can not be maintained in a comfortable fashion, the animal may be euthanized prior to the end of the stray period.
- (f) Any medical expenses incurred while the animal is in the care of the City shall be the responsibility of the owner/guardian of the animal should the owner/guardian be identified.

- (g) Animals that are the property of the City may be placed for adoption or humanely euthanized. (Ord. 81-101 §§ 1 (part), 9, 1981: Ord. 77-74 § 5 (part), 1977).

7.32.040 Impounded animals-- Reclamation.

- (a) An owner/guardian reclaiming an impounded animal shall pay a board fee as follows, in addition to a fee of \$7 for vaccinations of reclaimed cats and dogs:
 - (1) Dog, impounded for 1-5 days \$10.00 per day
 - (2) Dog, impounded for 6 or more days \$20.00 per day
 - (3) Cat or ferret, impounded for 1-5 days \$5.00 per day
 - (4) Cat or ferret, impounded for 6 or more days \$10.00 per day
 - (5) Horses, goats, pigs, poultry \$10.00 per day
 - (6) Other animals \$5.00 per day
- (b) The City of Bloomington Animal Care and Control Department may agree to waive some or all of its fines and fees at the discretion of the Director if the owner/guardian of an unaltered animal agrees to have the animal spayed or neutered as a condition of its release.
- (c) A person may reclaim an animal in the custody of the City of Bloomington Animal Care and Control Department upon providing the following:
 - (1) proof of ownership,
 - (2) identification such as a driver's license,
 - (3) payment of redemption fee and any other service/medical fees, as approved by the Director of Bloomington Animal Care and Control.
- (d) An animal that has been a previously impounded stray or at-large animal and is now being redeemed for the second or subsequent redemption within the last twelve (12) months, will be required to be
 - (1) implanted with a microchip by the City of Bloomington Animal Care and Control Department at the owner/guardian's expense for the purpose of future identification and recovery; and,
 - (2) spayed or neutered by a licensed veterinarian at the owner/guardian's expense prior to the shelter relinquishing the animal to the owner/guardian. Should cost be an issue, the City of Bloomington Animal Care and Control Department may enter into a payment agreement with the owner/guardian or the owner/guardian may sign over ownership rights of the animal to the City of Bloomington Animal Care and Control Department.

SECTION 10. Chapter 7.36 of the Bloomington Municipal Code entitled "Animal Care" shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.36

ANIMAL CARE

Sections:

- 7.36.010 Giving animals as prizes.
- 7.36.020 Poisoning animals.
- 7.36.025 Cruelty, abuse and neglect of animals.
- 7.36.030 Motor vehicle accidents involving animals.
- 7.36.040 Use of devices to induce performance.
- 7.36.050 General animal care.
- 7.36.060 Specific animal care provisions for animals used for drawing vehicles.
- 7.36.070 Abandonment.

7.36.010 Giving animals as prizes.

- (a) No person shall give away any live animal, fish, reptile, or bird as a prize for, or as an inducement to enter any contract, game, or other competition, or as an inducement to enter a place of amusement; or offer such vertebrate as an incentive to enter into any business agreement in which the offer was for the purpose of attracting trade.
- (b) No person shall auction any live animal except domestic livestock.
- (c) Violations. Any animal control officer may issue to any person in violation of this section a notice of ordinance violation. The penalty established in subsection (d) may, at the

discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.

- (d) Persons who violate any provision of this section shall be subject to a fine of one hundred dollars (\$100.00) for each offense. (Ord. 99-39 § 52, 1999; Ord. 81-101 § 11, 1981; Ord. 77-74 § 6 (part), 1977).

7.36.020 Poisoning animals.

No person shall expose any known poisonous substance, whether mixed with food or not, so that it shall be likely to be eaten by any animal; provided, that it shall not be unlawful for a person to expose on his own property common rat or mouse poison, unmixed or mixed only with vegetable substances. Persons who violate this section shall be subject to a fine of up to two thousand five hundred dollars (\$2,500.00) for each offense. (Ord. 99-39 § 53, 1999; Ord. 77-74 § 6 (part), 1977).

7.36.025 Cruelty, abuse and neglect of animals.

No person shall torture, beat, mutilate or neglect an animal resulting in serious injury or death to the animal. Persons who violate this section shall be subject to a fine of two thousand five hundred dollars (\$2,500.00) for each offense. (Ord. 99-39 § 54, 1999).

7.36.030 Motor vehicle accidents involving animals.

Any person who, as the operator of a motor vehicle, strikes a dog or cat, shall at once report the accident to the appropriate law enforcement agency or the City of Bloomington Animal Care and Control Department. Persons who violate this section shall be subject to a fine of fifty dollars (\$50.00) for each offense. (Ord. 99-39 § 55, 1999; Ord. 77-74 § 6 (part), 1977).

7.36.040 Use of devices to induce performance.

No animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical, or manual devices in a manner that is likely to cause physical injury or suffering. Persons who violate this section shall be subject to a fine of two thousand five hundred dollars (\$2,500.00) for each offense. (Ord. 99-39 § 56, 1999; Ord. 77-74 § 6 (part), 1977).

7.36.050 General animal care.

- (a) Every owner/guardian of an animal within the City shall see that his animal:
 - (1) Is kept in a clean, sanitary, and healthy manner and is not confined so as to be forced to stand, sit, or lie in its own excrement;
 - (2) Has proper and adequate food, water, shelter, and protection from the weather;
 - (3) If diseased or injured, receives care as necessary to prevent suffering and, if diseased, is segregated from other animals so as to prevent the transmittal of the disease to other animals.
- (b) Any domestic pet or feral cat that is owned or harbored and habitually kept outside or repeatedly left outside unattended by an adult person for such periods of time as may cause suffering or endanger the health or well-being of the animal shall be provided with a structurally sound, moisture proof and windproof shelter large enough to keep the animal reasonably clean and dry and provide adequate protection from the cold and heat. Shelter must be placed in a dry area free of debris, feces and standing water.
- (c) If multiple animals are present in one location, each animal must have access to shelter and the owner/guardian must meet all standards for each animal as detailed in this section.
- (d) The shelter must have bedding to provide insulation and protection against cold and dampness and promote the retention of body heat.
- (e) Appropriate medical care and grooming of animals must be provided.
- (f) No chain or tether shall weigh more than 1/8 of the animal's body weight.
- (g) Any chain or tether shall be at least ten (10) feet in length and have swivels on both ends.
- (h) Any chain or tether must be attached to a properly fitting buckle-type collar or harness worn by the animal. Choke collars and pinch collars are prohibited for purposes of tethering an animal to a stationary object or cable run. A person may not wrap a chain or tether around an animal's neck. A chain or tether used to restrain an animal must, by design and placement, be unlikely to become entangled.

- (i) It shall be unlawful for the owner/guardian of any animal to keep or maintain the animal on a tether for a period of more than ten (10) continuous hours and no more than twelve (12) hours in any twenty-four (24) hour period, or for any duration under conditions, which threaten the health, or well being of the animal.
- (j) A muzzle may not be worn continuously as a means for controlling barking.
- (k) A person may not restrain an animal in a manner that does not allow the animal to have access to necessary shelter, water and food.
- (l) A person may not restrain an animal in a manner that allows the animal to move outside property owned, lawfully occupied or controlled by the person.
- (m) Any person who owns or harbors any intact female dog or cat shall, during the period that such animal is in heat or in estrus, shall keep such dog or cat in a secured area that prevents a male dog or cat from having access to such female except for controlled breeding permitted by the owner/guardian of the female. Additionally, the female dog or cat shall not be chained or tethered in a manner that prevents her from defending herself or from avoiding a mate.
- (n) It shall be unlawful for any person to place or confine or allow any animal to be confined in such a manner that it must remain in a motor vehicle, trailer or pet carrier under such conditions for such periods of time as may cause suffering or endanger the health or well-being of the animal due to extreme temperatures or lack of food or water.
- (o) No person shall intentionally or unintentionally cause or allow the breeding of more than one (1) litter per female cat or dog in a twelve (12) month period.
- (p) Any animal control officer may issue to any person in violation of this section a notice of ordinance violation. The penalty established in subsection (q) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (q) Persons who violate any provision of this section shall be subject to a fine of fifty dollars (\$50.00) for each offense. (Ord. 99-39 § 57, 1999; Ord. 81-101 § 12, 1981; Ord. 77-74 § 6 (part), 1977).

7.36.060 Specific animal care provisions for animals used for drawing vehicles.

- (a) In addition to the provisions set out in Section 7.36.050 "General animal care" above, every owner/guardian of an animal used to draw a vehicle for hire within the City shall see that:
 - (1) The animal has adequate flesh and muscle tones;
 - (2) The hooves of the animal are properly trimmed and shod within every eight (8) weeks of work. Acceptable horseshoes for this work are limited to Borium studded type or polyurethane (plastic), studs optional. Records must be kept for twelve (12) months by the owner/guardian of the dates and the name of the blacksmith who shod the animal;
 - (3) The animal is groomed daily;
 - (4) The animal is not over-ridden, driven, or kept, to result in over-heating or exhaustion. Animals shall not be worked during the middle of the afternoon during hot days when livestock warnings are issued. Whenever possible during warm weather the driver shall park in the shade. Animals shall not be worked more than two (2) hours without being given a thirty (30) minute rest period. Maximum working period for any one (1) animal shall be ten (10) hours out of every twenty-four (24) hours, and any five (5) out of seven (7) consecutive days.
 - (5) No animal may be whipped by a driver with more than a light touch by a light whip or in a manner that causes injury or suffering;
 - (6) The speed at which any animal is driven shall not exceed a trot;
 - (7) The animals shall not be left unattended on a street or public way;
 - (8) The harness, bridle, saddle, and any other equipment required or in use is properly fitted, in good working order, free of makeshift design, and used so as in no way causes pain or injury to the animal. Twisted wire snaffles, and spurs are not permitted.
- (b) Any animal control officer may issue to any person in violation of this section a notice of ordinance violation. The penalty established in subsection (d) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In

the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.

- (c) To protect the health and safety of the animal and the public, upon a finding that an animal is sick, injured, lame, malnourished, or in any other condition that renders it unfit for drawing a vehicle for hire, any animal control officer may issue an order that the animal is deemed unfit for work and order it removed from the vehicle and the City streets; such order may be appealed within forty-eight (48) hours to the Animal Control Commission which shall, upon hearing all evidence, confirm or deny the order of the animal control officer.
- (d) Persons who violate any provision of this section shall be subject to a fine of fifty dollars (\$50.00) for each offense. (Ord. 99-39 § 58, 1999; Ord. 83-53 § 2, 1983).

7.36.070 Abandonment.

No owner/guardian of an animal shall abandon such animal. Persons who violate this section shall be subject to a fine of up to five hundred dollars (\$500.00) for each offense. (Ord. 99-39 § 59, 1999; Ord. 83-53 § 3, 1983; Ord. 77-74 § 6 (part), 1977).

SECTION 11. Chapter 7.40 of the Bloomington Municipal Code entitled “Wild Animals” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.40

WILD ANIMALS

Sections:

- 7.40.010 Keeping wild animals.
- 7.40.020 Exceptions.
- 7.40.030 Violations.

7.40.010 Keeping wild animals.

No person shall keep or permit to be kept on his premises any wild animal for any purpose, except as provided in Section 7.40.020. This section shall not be construed to apply to zoological parks, circuses, animal exhibitions, research laboratories, licensed wildlife rehabilitators, or licensed educators. (Ord. 99-39 § 60, 1999; Ord. 76-25 § 4, 1976; Ord. 76-14 § 1 (part), 1976).

7.40.020 Exceptions.

Any person owning a wild animal prior to the enactment of this chapter shall be permitted to continue ownership of the animal; provided, that he registers the animal with the Animal Control Commission within six (6) weeks after enactment of this chapter. A copy of this registration must be kept by the owner/guardian for as long as the person owns the animal as evidence of possession of the animal prior to the enactment of this chapter. (Ord. 76-14 § 1 (part), 1976).

7.40.030 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in sub-section (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (b) Persons who violate any provision of this section shall be subject to a fine of five hundred dollars (\$500.00) for each offense. (Ord. 99-39 § 61, 1999; Ord. 81-101 § 3 (part), 1981; Ord. 76-14 § 1 (part), 1976).

SECTION 12. Chapter 7.42 of the Bloomington Municipal Code entitled “Reptiles” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.42

REPTILES

Sections:

- 7.42.010 Registration--Pet shops.
- 7.42.020 Registration--Others.
- 7.42.030 Registration--Changes in harboring address.
- 7.42.040 Lost or impounded reptiles.
- 7.42.050 Violations.

7.42.010 Registration--Pet shops.

- (a) Any pet shop intending to harbor, sell, trade, or in any way distribute reptiles within the City must register with the City of Bloomington Animal Care and Control Department, in writing, of such intention before any reptiles may be harbored, sold, traded, or distributed.
- (b) Any pet shop harboring, selling, trading or in any way distributing reptiles within the City shall make available for inspection by the City of Bloomington Animal Care and Control Department, an inventory of the number and type of reptiles received, the number and type distributed by sale, trade, death or in any other manner, and the number and type on hand.
- (c) Whenever any pet shop sells, trades or in any way distributes an exotic snake (not native to the United States) within the City, it shall complete a form provided by the City of Bloomington Animal Care and Control Department indicating the type of exotic snake, the person taking possession of the snake and the address where the snake will be harbored. There will be no fee for said registration. (Ord. 85-23 § 2 (part), 1985).

7.42.020 Registration--Others.

Any person harboring an exotic snake within the City who acquired the snake from any source other than a registered pet shop, must register the snake with the City of Bloomington Animal Care and Control Department. Such registration shall consist of the name of the owner/guardian and the address where the snake will be harbored. There will be no fee for said registration. (Ord. 85-23 § 2 (part), 1985).

7.42.030 Registration--Changes in harboring address.

It shall be the responsibility of each owner/guardian of an exotic snake, to inform the City of Bloomington Animal Care and Control Department whenever the address at which a snake is being harbored changes for any reason. These reasons include, but are not limited to: death, loss, sale, transfer, or if the owner/guardian of the snake moves. (Ord. 85-23 § 2 (part), 1985).

7.42.040 Lost or impounded reptiles.

Lost reptiles shall be impounded and released to the registered owner/guardian or disposed of in accordance with Sections 7.32.030 and 7.32.040, provided however, that any nonpoisonous species native to Indiana shall be presumed wild and released to a natural habitat. (Ord. 85-23 § 2 (part), 1985).

7.42.050 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (b) Persons who violate any provision of this section shall be subject to a fine of fifty dollars (\$50.00) for each offense. (Ord. 99-39 § 62, 1999; Ord. 85-23 § 2 (part), 1986).

SECTION 13. Chapter 7.44 of the Bloomington Municipal Code entitled “Rabies” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.44

RABIES

Sections:

- 7.44.010 Rabies vaccination required.
- 7.44.020 Animals biting persons.
- 7.44.030 Animals biting animals
- 7.44.050 Euthanization of stray animals.
- 7.44.060 Violations.

7.44.010 Rabies vaccination required.

It is unlawful to own or harbor a dog, cat or ferret over the age of three (3) months without a valid rabies vaccination. (Ord. 98-27 § 9, 1998: Ord. 81-101 § 13, 1981: Ord. 77-51 § 1 (part), 1977).

7.44.020 Animals biting persons.

- (a) If an owned dog, cat or ferret has bitten a person, the animal shall be impounded in the City of Bloomington Animal Shelter, veterinary hospital, or kennel approved by a City animal control officer, at the animal owner/guardian's expense. This impoundment shall be for a period of ten (10) days in order to determine whether or not the animal has rabies. If the animal dies during this ten (10) day period it shall, at the animal owner/guardian's expense, be sent to the proper authorities to determine whether or not it was rabid. Other animals which have bitten a person shall be handled in accordance with the current compendium for animal rabies control, with all expenses being the responsibility of the animal's owner/guardian.
- (b) An owner/guardian reclaiming an impounded bite case animal, having been boarded at the City of Bloomington Animal Shelter, shall pay a board fee as follows:
 - (1) Dog \$10.00 per day
 - (2) Cat or ferret \$5.00 per day
- (c) Persons failing to quarantine an owned animal that has bitten a person shall be subject to a fine as specified in 7.44.060. (Ord. 99-39 § 63, 1999).

7.44.030 Animals biting animals

If an animal has bitten another domestic pet, at the discretion of a City animal control officer, the animal may be impounded in the City of Bloomington Animal Shelter, veterinary hospital, or kennel approved by a City animal control officer, at the animal owner/guardian's expense. The conditions of the impound shall be the same as in Section 7.44.020.

7.44.050 Euthanization of stray animals.

If a stray dog, cat or ferret has bitten a person or animal it shall be confined in the City of Bloomington Animal Shelter for five (5) days only. At the end of the five (5) day period, if unclaimed, the animal shall be euthanized, and its brain sent to the Indiana Department of Health Rabies Laboratory for diagnostic tests. (Ord. 98-27 § 13, 1998: Ord. 77-51 § 1 (part), 1977).

7.44.060 Violations.

Unless otherwise provided for by state statute, persons who violate any provision of this chapter shall be subject to a fine of up to two hundred dollars (\$200.00) for each offense. (Ord. 99-39 § 64, 1999; Ord. 77-51 § 1 (part), 1977).

SECTION 14. Chapter 7.48 of the Bloomington Municipal Code entitled “Adopted Animals” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.48

ADOPTED ANIMALS

- 7.48.010 Adoption fees
- 7.48.020 Spaying and neutering of adopted animals
- 7.48.030 Violations

7.48.010 Adoption fees.

- (a) The fee to adopt any animal shall be as listed in the table found in this section. The adoption fee must be paid prior to the animal being taken to his or her new home.

DOMESTIC ANIMALS

Dogs and cats under 5 years of age	\$75.00
Dogs and cats over 5 years of age	\$55.00
Rabbits and ferrets	\$45.00
Goats, pigs, horses, etc.	\$20.00

BIRDS

Parakeets/Finches	\$10.00
Lovebirds/Cockatiels	\$20.00

REPTILES	\$20.00
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SMALL ANIMALS

Guinea Pigs	\$5.00
Mice	\$2.00
Rats	\$2.00
Hamster/Gerbils	\$2.00

- (b) In order to help more companion animals find suitable homes, the Director of the City of Bloomington Animal Care and Control Department has the discretion to raise or lower the adoption fees under the following circumstances:

- (1) Adoptions of animals which have incurred extraordinary expenses while under the shelter's care;
- (2) Adoptions of hard-to-adopt animals or of foster animals by foster parents;
- (3) Adoptions by breed rescue organizations or transfers to humane associations; or
- (4) Adoptions through special promotions or when the kennel is full.

The Director shall inform the Animal Control Commission of any such adjustments at their monthly meeting. (Ord.04-34 &3,2004).

7.48.020 Spaying and neutering of adopted animals.

Any dog, cat, rabbit or ferret adopted from the City of Bloomington Animal Shelter shall be spayed or neutered by a veterinarian prior to being taken to his or her new home. The City of Bloomington Animal Care and Control Department shall assume the cost of the spay or neuter operation. If a veterinarian should determine that the dog, cat, rabbit or ferret is physically unable to undergo such an operation at the current time, the dog, cat, rabbit or ferret is to be neutered or spayed as soon as the veterinarian determines it is able. (Ord. 04-34 & 2,2004: Ord. 98-27 § 14, 1998: Ord. 81-101 §§ 1 (part), 15, 1981; Ord. 77-74 § 7 (part), 1977).

7.48.030 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in sub-section (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (b) Persons who violate any provision of this section shall be subject to a fine of two hundred dollars (\$200.00) for each offense. (Ord. 99 § 64, 1999; Ord. 81-101 § 3 (part), 1981: Ord. 77-74 § 7 (part), 1977).

SECTION 15. Chapter 7.52 of the Bloomington Municipal Code entitled “General Provisions” shall be deleted and replaced with the following and the codifier shall preserve the citations to previous ordinances affecting this chapter:

Chapter 7.52

GENERAL PROVISIONS

Sections:

- 7.52.010 Disposition of funds.
- 7.52.020 Animals census.
- 7.52.030 Conflicting ordinances.
- 7.52.035 Maximum fines
- 7.52.040 Severability clause.
- 7.52.050 Animal shelter.
- 7.52.060 Interference with animal control officer--Penalty.

7.52.010 Disposition of funds.
All fees or moneys shall be paid to the City of Bloomington Controller, the City of Bloomington Legal Department, the City of Bloomington Animal Care and Control Department or agents designated by the Animal Control Commission. Money so paid shall be transmitted to the City of Bloomington Controller and shall be used in carrying out the provisions of this title. (Ord. 81-101 § 1 (part), 1981; Ord. 76-14 § 1 (part), 1976).

7.52.020 Animals census.
Upon enactment of the ordinance codified in this title, the City of Bloomington, at the direction of the Mayor with the approval of the Common Council, may instigate and carry out a City-wide census for the purpose of carrying out the provisions of this title. A census may be held once every two (2) years thereafter at the request of the Mayor and Common Council. The Animal Control Commission shall administer the census. (Ord. 76-14 § 1 (part), 1976).

7.52.030 Conflicting ordinances.
All other ordinances of the City of Bloomington that are in conflict with this title are repealed to the extent of such conflict. (Ord. 76-14 § 1 (part), 1976).

7.52.035 Maximum fines
No fine for a single violation of the provisions of this title shall exceed twenty-five hundred dollars pursuant to IC 36-1-3-8 (10).

7.52.040 Severability clause.
If any part of this title shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this title. (Ord. 76-14 § 1 (part), 1976).

7.52.050 Animal shelter.
The physical facility known as the City of Bloomington Animal Shelter shall be under the administrative control of the Department of Public Works and shall constitute a division of the department. The senior animal control officer and Animal Control Commission shall retain all powers and duties conferred by this title for the detailed supervision of matters relating to animal control. It is the intent of this title that the Animal Control Commission be an advisory body to formulate, adopt and implement policies, principles and standards for humane treatment and control of all animals in the City. (Ord. 81-101 § 1 (part), 1981; Ord. 77-62 § 11, 1977).

7.52.060 Interference with animal control officer--Penalty.
Whoever forcibly assaults, resists, opposes, obstructs, prevents, impedes or interferes with any animal control officer while that officer is engaged in the execution of any duties required of animal control officers under this title shall be fined not more than one thousand dollars (\$1,000.00) per occurrence. (Ord. 83-6 § 7, 1983; Ord. 81-101 § 1 (part), 1981; Ord. 81-5 § 3, 1981; Ord. 76-14 § 1 (part), 1976).

SECTION 16. This Ordinance shall be in full force and effect on and after its passage by the Common Council of the City of Bloomington and approval by the Mayor and publication as required by law.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2005.

ANDY RUFF, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this ____ day of _____, 2005.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2005.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance extensively amends Title 7 (Animals). It adds numerous definitions and amends others to reflect current animal-related issues. It deletes the licensing chapter. It adds new, more specific standards for the humane treatment of animals including time and manner that animals are tethered. It increases the number of cats and dogs that can live in a household before a non-commercial kennel permit is required. The ordinance also allows feral cat colonies and sets standards for their operation. It defines potentially dangerous and vicious animals, requires a hearing to make and review that determination, and establishes procedures for treating those animals once that determination is made. It increases the fees for breeder permits to encourage spay/neuter. It amends the impoundment chapter to clarify the handling of strays and to give owners the option to post a bond if they cannot reclaim their animal within the five-day limit. In the case of unaltered animals which are impounded twice within a 12 month period, it requires that that the animal be altered and micro-chipped at the owner/guardian's expense before being returned the second time. It gives the Director authority to waive fees, fines and penalties, if an owner/guardian agrees to have an animal altered. It increases the fines for the mistreatment and poisoning of animals from \$500.00 to \$2,500.00. Lastly it corrects numerous inconsistencies throughout Title 7.

To: Members of the Common Council
From: Julio Alonso, Director of Public Works
Re: Proposed Changes to Title 7, Animals
Date: November 22, 2005

The documents that accompany this memo provide details regarding the specific changes that are being proposed to Title 7. The document titled "Summary of Proposed Changes..." outlines the substance of the changes and the affected sections of the code for reference. As such, the focus of this memo will be to explain the process and reasoning that brought us to this point and discuss the most significant of the proposed changes.

Background/Process Summary: The legislation before you is the result of a process that began over two years ago. Members of the City Animal Control Commission and County Animal Management Commission, who also represent other organizations such as the Monroe County Humane Association (MCHA), Pets Alive and the city staff; began a review of both city and county animal-related ordinances. The process was initiated because of and driven by several needs/issues:

- Bloomington and Monroe County continue to experience an animal overpopulation crisis. In 2004, over 2,200 animals were euthanized at our shelter. Continuing to accept and allow killing on such a large scale is not only inhumane but costs taxpayers' money and limits the ability of animal care and control staff to provide quality customer service and animal care.
- Standards for the humane treatment of animals are unclear and subjective in current code.
- Standards for determining the potentially dangerous nature of animals are also unclear and subjective in current code.
- Some of current code is outdated and portions seem unenforceable.

This ad-hoc committee met numerous times over several months and held parallel discussions on city and county ordinances. The county legal department has worked closely with the committee and changes to county ordinances may be considered in December. The committee's work on city ordinances was reviewed by the city administration and adjusted based on that input. The proposals were then shared with the Animal Control Commission (ACC) and the Animal Welfare Action Coalition (AWAC), to obtain input from commission members and those representing animal welfare organizations including MCHA; Pets Alive; Wildcare, Inc; Rescue Farm, Inc.; and two local veterinarians. Additional changes were made to proposals based on input received from ACC and AWAC, and a public meeting was held by the ACC in early November, from which additional changes came. But as noted in the "public comment" document, not all suggestions from these groups were incorporated. Interested members of the public also contacted us with input regarding aspects of the proposals (specifically tethering restrictions and guardian language). Review by the COB Legal Department produced additional changes. The Animal Control Commission forwarded the proposals to the Board of Public Works on 11/21/05 with some recommended changes, most of which were also incorporated into the proposal.

Goals of the Legislation: The primary reasons that review of Title 7 was initiated remain the primary goals of this proposal:

- Improve Humane Treatment of Animals
- Reduce Overpopulation and the corresponding public burden
- Ensure public health and safety
- Clarify and update existing code as necessary

In reviewing the proposals brought forward by the committee and the input received from the public, staff sought to adopt an approach that found balance between limiting government intrusion upon responsible

animal guardians while ensuring that the behavior of less-responsible guardians did not pose threats to public health and safety.

Animal care and control issues evoke strong emotion from the public and the premise of those emotions varies widely. Many citizens feel that the primary government role should be to protect them and their property from animals that may pose a nuisance or a risk to them and that ownership of animals is a privilege that should be regulated and only be accorded to those who act responsibly. Many other citizens, while ironically agreeing with that last sentiment, believe that animal overpopulation is a result of human behavior; that how a society treats animals is a measure of its own humanity; that government limits on animal guardianship/ownership are counterproductive and unfair to responsible guardians; and that government should proactively devote additional resources to animal care.

Our goal throughout this process has been to achieve the above-listed goals while finding as much common ground as possible to strike an appropriate balance between these often-competing points of view.

Specific Changes/Issues of Interest and how they achieve the goals: First, let me encourage you to consider the proposals to change Title 7 in the context of an overall strategic approach. Many of the changes proposed are single elements of a comprehensive plan to reduce overpopulation and, eventually, the public resources that must be invested in animal control while advancing the cause of animal care.

- *Licensing vs. Breeding:* Existing code requires that all dogs and cats over six months be licensed. This requirement has been essentially unenforced for the past several years because it has not been effective. Compliance is entirely based on the “honor system” because animal control has no mechanism for ensuring that ALL dogs and cats have a license. Previously, veterinarians assisted in the licensing process, but this was burdensome for them and placed them in an awkward position with their customers. Also, some owners do not necessarily provide for regular vet visits for their animals, as such, there is no mechanism for licensing those animals.

The ad-hoc committee initially proposed changing the licensing system to a two-tiered system of “registration.” Under that proposal, all owners would be required to register their animals and a differential fee to encourage spay/neuter would be established. Altered animals would require a \$5 license, while the license for unaltered animals would cost \$100. While the premise behind this plan is valid, we believe that it replaces one unenforceable system with another and would not truly lead to increased spay/neuter because only responsible citizens would come forward to register their animals.

As such, our proposal eliminates licensing entirely and instead focuses on the issue of breeding, enhancing that language to encourage spay/neuter. In acknowledgement of the practical limitations of licensing and in respect for individual preferences, no one is required to register or spay/neuter their animal. And if your unaltered animal remains on your premises and is unable to cause the birth of additional animals, you need do nothing. However, if that animal breeds, intentionally or otherwise, another set of requirements becomes pertinent. Proposed changes in the breeder section of the code include:

- An increase in permit fees....minor breeder permit increases from \$60 to \$100 and major breeder permit increases from \$100 to \$150.
- If an owned, unaltered animal is found unrestrained, the owner/guardian is required to obtain a minor breeder’s permit because their animal was running loose and could potentially have caused a litter. This requirement is waived if the owner/guardian agrees to have the animal altered.

- If an owned, unaltered animal is found unrestrained more than once in a 12 month period, the animal will be altered and microchipped prior to being returned to the owner/guardian at their expense.
- The ability for animal control to waive fines and fees if an owner/guardian agrees to spay/neuter an animal has been added in appropriate code sections.
- While not an actual change to the code, it is our intention that increased enforcement of breeder permit requirements will occur.

We believe this approach focuses requirements and enforcement action upon those citizens who contribute to the overpopulation problem, while not imposing unreasonable demands upon individual citizens.

- *Guardian Language:* This change was driven by a local citizen representing the national group In Defense of Animals’ “Guardian Campaign” - a national effort to foster greater respect, responsibility and compassion toward animal companions. Several US cities; Marin County, CA; and the state of Rhode Island have adopted similar language. We are pleased to support replacing the term “owner” with “owner/guardian” to advance the goal of encouraging more responsibility toward animal companions. (see attached public comment info)
- *Tethering Restrictions:* Current code does not restrict the tethering of animals. Our proposal establishes that animals may not be tethered longer than 10 consecutive hours or 12 total hours in any 24 hour period. The Humane Society of the United States supports the United States Department of Agriculture in concluding that continuous confinement of dogs by a tether is inhumane. In addition, extensive tethering of dogs can create a threat to public safety. HSUS reports that “A dog kept chained in one spot for hours, days, months or even years suffers immense psychological damage. An otherwise friendly and docile dog, when kept continuously chained, becomes neurotic, unhappy, anxious and often aggressive.” At least 25 communities, including two in Indiana, have passed laws that regulate the practice of tethering.

Some citizens have advocated for an even more restrictive limit on tethering (see attached public comment info). We believe our proposal significantly improves animal welfare by halving the allowable daily tethering time, but accommodates the limited use of tethering as a restraint method for those who may not have other options.

- *Domestic Pet Limits:* Current code establishes a limit of 4 animals per household before a “non-commercial kennel” permit is required. The elimination of any such limit is an element of proposals by national groups to reduce reliance on euthanasia to control animal populations and achieve “no kill” status. This approach is strongly and vocally embraced by many local citizens and animal advocates. (see attached public comment info)

We believe that enabling citizens to provide a home for more animals is a positive goal, however, it must be achieved with respect for the property, safety and quality of life of neighboring citizens. We do not support eliminating the limit on domestic pets or the requirement that a permit be obtained to exceed that limit. We do, however, agree that four is too low a number and should be increased to allow responsible owner/guardians to provide homes for and enjoy these animals without government intrusion. As such, our proposal increases this number to ten, but limits the number of dogs to four and cats to six. We believe this increase allows those citizens who can adequately care for these animals to do so with minimal government intrusion, but provides animal care & control with a necessary tool to ensure both that animals are adequately cared for and that they do not become a nuisance to other citizens.

Again, we believe this proposal strikes a balance between not interfering with reasonable animal guardianship while remaining attentive to concerns of neighbors. For advocates on either end of this question, it is important to note that this provision does not preclude action against the owner/guardian of even one animal that poses a nuisance, nor does it establish a top end limit on animals.

- *Animal Care Standards:* While current code requires that owners provide “adequate” food, water, shelter and protection from the weather, this standard is somewhat subjective and open to interpretation. The new proposal adds greater specificity (“structurally sound, moisture proof and windproof” shelter) and will assist Animal Control Officers in determining whether conditions meet code or constitute a violation.
- *Potentially Dangerous/Vicious Animals:* Current code is quite broad in its definition of “vicious” and vague in addressing requirements placed on owners of such animals, providing inadequate guidance and/or support to our animal control officers and legal staff called upon to address such matters. New language creates different categories of classification (“potentially dangerous” and “vicious”) and establishes definitions upon which to make such determinations as well as specific restraint steps to be required of owner/guardians. Due process for owner/guardians is also established through ACC review of such determinations. The result is a clearer and more understandable process for both citizens and animal control personnel that should provide for greater ability to address public safety concerns.
- *Feral Cat Management:* Cats can become pregnant as early as six months of age and produce between two and four litters each year. A pair of breeding cats can result in over 400,000 cat births over 7 years. Estimates range as high as 90 million feral (“wild” or “unsocialized”) cats in the US. Trap/Neuter/Return (TNR) involves humanely trapping, altering, and vaccinating feral cats and returning them to their original territory where a caretaker provides regular food, shelter and monitoring. “The HSUS believes that TNR, with ongoing management by dedicated caretakers, currently provides the most effective long-term method for decreasing the numbers of feral cats.” Other organizations supporting TNR include the American Society for the Prevention of Cruelty to Animals (ASPCA); American Humane Association; and the American Veterinary Medical Association (AVMA).

With extensive experience to demonstrate that the trapping and killing of feral cats does not eliminate the problem, many communities are turning to TNR programs and demonstrating success, including: Toledo, Ohio; San Diego, California; Maricopa County, Arizona; and Atlantic City and Cape May, New Jersey. According to Alley Cat Allies, “if you discount the humane and ethical reasons for not attempting to exterminate large numbers of healthy animals, you are left with one indisputable fact: attempts at extermination are rarely, if ever, successful. We have decades of documented proof, and perhaps, centuries of practical knowledge, that campaigns to catch and kill all the cats in an area where they have established their homes do not work. Survivors breed exponentially; outsiders move in to take advantage of whatever food source exists. It’s called the vacuum effect. It is how the cycle of population growth always begins anew.”

In October, the Indianapolis City-County Council adopted an ordinance to facilitate TNR programs in Indy, working with a non-profit TNR organization, IndyFeral. Locally, a non-profit organization called Feral Cat Friends, Inc. has been created to implement TNR programs. Supporters of this group have advocated for an approach that goes further than staff is willing to implement at this time. While we support the concept of TNR as the most humane and effective way to address feral cat overpopulation, we cannot support elimination of nuisance provisions, domestic pet limits, or requirements that those who wish to host a colony of more than 6 cats obtain a permit. We do believe,

however, that there is significant value to continuing discussion with Feral Cat Friends and closely monitoring Indianapolis' experience with its new legislation and we're pleased to support legislation that establishes the concept of TNR locally. (see public input information)

Conclusion: I return to two key points that I established at the start...First, please view these proposals as a total picture rather than just as individual elements. There is no one single solution to our animal overpopulation crisis. Experienced advocates and public officials agree that a combination of approaches is required. A HUGE step was legislation the Council approved last year, which required and set up the mechanism for all animals to be spayed/neutered prior to adoption from our shelter. Other work being done by our staff is also critical – increasing the number of foster guardians; adoption counseling intended to reduce failed adoptions and returns to the shelter; use of alternatives to euthanasia when the shelter is full including temporary boarding; public education about the importance of spay/neuter, etc. These initiatives must be combined with incentives to spay/neuter and disincentives to allow indiscriminate breeding; availability of low-cost or free spay/neuter services; well-managed TNR programs; increased adoption efforts and reduction of obstacles to adoptions; among others.

Second, these proposals represent a balanced approach. As you can see from the record of public input to this point, they do not go as far as many animal welfare advocates would like in forcing the issue of spay/neuter and removing restrictions on animal ownership; and they probably go further than some citizens would like in creating disincentives for breeding and facilitating the ownership of more animals. But from our perspective, they greatly improve our ability to ensure more humane treatment of animals and to continue reducing the overpopulation crisis that we're experiencing. We remain committed to ongoing review of Title 7 as our situation evolves.

In conclusion, we seek your support of the ordinance before you, which we believe represents the result of much research, effort and public input and advances the goals outlined earlier in this memo. The bottom line is that we cannot adopt and foster enough animals to keep pace with the volume, and we can't build a shelter big enough to hold them all or fund a staff large enough to care for, train, and place them all. We must stop them from coming in the door, and that means we must stop the breeding. That, as a community, we routinely accept the annual killing of over 2,000 animals is frankly unacceptable. This legislation is a very important step in the right direction.

And lastly, there are many people who have worked on this legislation including those volunteer board and commission members who helped initiate the process. Our very able Animal Care & Control Director Laurie Ringquist has also devoted a great deal of time to this effort along with Public Works Deputy Director Toni McClure and attorneys Patty Mulvihill and Tricia Bernens. The SPEA Service Corps program has proved its worth through the solid effort of our SPEA intern, Mike Zawada, who has also been instrumental in the work to bring this forward.

As always, please do not hesitate to contact me with questions or concerns. Thank you!

SUMMARY OF PROPOSED CHANGES TO THE CITY OF BLOOMINGTON MUNICIPAL CODE TITLE 7—ANIMALS

ANIMAL CARE AND CONTROL DIVISION DEPARTMENT OF PUBLIC WORKS

NOTE: This document summarizes a DRAFT of proposals still under legal and administrative review.

The proposed changes are meant to address four categories of concern:

- 1) To improve standards for the humane treatment of animals
- 2) To reduce overpopulation and public burden
- 3) To preserve public health and protect the public from harm and disturbance
- 4) To clarify and add to the code to ensure a comprehensive and strategic approach

Within each section, each item has the following pattern:

Title.Chapter.Section(Subsection)—Change Status
Changes Made

Humane Treatment of Animals

Highlights:

- Defines standards of care for adequate outdoor shelter
- Establishes limits on tethering and standards for tethers
- Specifically establishes unlawfulness of confining dogs to vehicles or carriers in a manner that endangers their health
- Establishes the concept of managing colonies of altered feral cats as an alternative to automatically trapping and euthanizing feral cats
- Replaces the term “owner” with “owner/guardian” to help foster an attitude of responsibility toward animals
- Reduces the “stray” period for litters of animals to three days allowing them to be fostered or adopted more quickly; also allows for euthanasia of a suffering animal prior to expiration of stray period

7.21.055(b)—New

Establishes that the provisions of “Animal Care” chapter (7.36) apply to feral cats.

7.36.010(b)—New

Prohibits the auction of animals except livestock or horses.

7.36.020 – Changed

Increases the fine for poisoning animals to \$2,500.

7.36.025—Changed

Increases the fine for causing the serious injury or death of an animal to \$2,500.

7.36.040—Changed

Increases the fine for using performance inducing devices to \$2,500.

7.36.050—Additions

Specifies adequate shelter.

Specifies requirements and time limitations on tethering.

Requires that animals not be put at risk of danger, injury, or abuse.

7.36.060(a)(5)—Addition

Clarifies that an animal pulling a vehicle for hire must not be struck in such a way that causes injury or suffering.

Spay/Neuter, Animal and Population Control, and Reducing Public Burden

Highlights:

- Eliminates unenforced licensing requirement from code
- Establishes mandatory spay/neuter and microchipping for owned animals found unrestrained more than once; establishes requirement for a breeder's permit if an owned, unaltered animal is found unrestrained
- Addresses cycle of feral cat overpopulation by establishing alternative of spay/neuter return as opposed to trap and euthanize, which perpetuates cycle
- Changes language to allow for "good Samaritan" clauses...eliminates penalties for those who act in good faith...ex. no breeder permit fee charged if owner agrees to alter the parent animal of a litter

7.01.010 – New

Adds definition of Trap-Neuter-Return

7.12—Deleted

Licensing requirement is being replaced by increased enforcement of permit and fine system, largely due to the difficulty in administering and enforcing licensing.

7.21.026—New

Describes the application for feral cat colony permits.

7.21.060(c)—New

Requires permit prior to creation of feral cat colony.

7.21.070—Changed, Additions

Changes the number of pets at which a non-commercial kennel permit will be required.

Corrects an error in the fee for commercial kennel permits.

7.22.010(a)—Additions

Clarifies which factors necessitate a minor breeder permit.

7.22.030—Addition

Includes requirement of those cited for failure to restrain an unaltered animal to obtain a breeder permit.

7.22.060—Additions

Establishes that minor breeder permit must be obtained for each unrestrained, unaltered animal. Increases permit fees for minor breeders to \$100; and major breeders to \$150.

7.24.010—Additions

Requires that unrestrained, altered cats must also be identifiable.

States that unrestrained altered and identifiable cats are still subject to Public Nuisance laws.

Public Safety and Courtesy

Highlights:

- Establishes definitions for types of aggressive or dangerous behaviors and the procedure for addressing them (“potentially dangerous” and “vicious”)
- Establishes process to address bites on other animals as well as humans

7.21.055(a)—New

States that feral cat colonies must not pose a public nuisance.

7.22.010(b)—Addition

Requires minor breeders to inform new owner/guardian of state requirements for rabies vaccinations.

7.24.030—Replaced

Details the process of identifying, investigating, and addressing vicious animals.

7.24.040(b)—Changed

Causes fines to increase incrementally per offense for unrestrained animals.

Establishes fines for violations created by changes to 7.24.030, vicious animals.

7.32.010—Changed, Additions

Removes license language.

Specifies the need for altered cats to be identifiable and not a nuisance.

Adds option of animal being returned instead of impounded if it can be secured.

7.32.030—Additions

Specifies the conditions under which impounded animals are automatically transferred to the City.

7.32.040—Additions

Adds a fee for vaccinations during impoundment.

Establishes that board fee applies to horses, goats, pigs, and poultry.

Provides for waiving some or all fines/fees if alteration is agreed to.

Provides requirements for reclamation of impounded animals.

Requires microchip to be implanted at owner's expense for a repeat impoundment.

7.44.030—New

Provides for the option of impounding an animal that bites another animal.

Clarifications and Miscellaneous

Highlights:

- Establishes or increases accuracy of definitions for abandoned, animal exhibitions, exotic, municipal vs. non-municipal shelters, reptile, wild animal, zoological park
- Corrects clerical errors
- Changes language to reflect that while animal fees & fines are specifically accounted for and used to implement this title, they are not placed in a separate “special fund”

7.01.010—Changed, Additions

Provides more accurate language or definitions for abandoned, exhibition, at-large, livestock, domestic, exotic, reptile, wild animal, zoological park et al.

7.16.010—Additions

Includes the words “non-municipal” and “sanctuary” with regard to permit requirements for commercial animal establishments.

7.16.020—Changed, Additions

Clarifies language regarding inspections by animal control to ensure constitutionality and due process

7.16.060—Additions

Establishes fees for permanent animal exhibitions; increases fees for circuses and transient animal exhibitions to \$1,000; and sets fees for non-municipal animal shelters/sanctuaries at \$0.

7.21.030—Changed

Clarifies that inspections must be conducted at reasonable times and are subject to constitutional due process. Subsequent references in 7.21.030 and 7.22.040 have also been changed to the same language.

7.21.050(f)—Changed

Allows for exception of individual kennels when sufficient yard area is available.

7.36.020—Changed

Changes word “liable” to “likely” with regard to food to be eaten.

7.36.040—Changed

Removes the word “performing” to include all animal exhibitions.

7.40.010—Changed

Removes reference to “vicious” animals because it has a separate section.

Removes the word “performing” to include all animal exhibitions.

7.52.010—Changed

Adds City legal department to possible recipients of payment for fees, fines, etc.

Removes reference to nonexistent “special fund.”

Throughout Code—Changed

Minor grammatical and consistency changes have been made in almost all sections of the code.

Examples include capitalization of letters, spelling out of numbers, consistent use of “City of Bloomington”, etc.

Process Summary for Animal Care & Control Ordinance Revisions

Spring 2003 through present: An ad hoc committee composed of representatives from the City of Bloomington Animal Control Commission, Monroe County Animal Management Commission, Monroe County Humane Association, Pets Alive and Bloomington Animal Care & Control researched, discussed and drafted proposed changes to both Monroe County and City of Bloomington animal-related ordinances.

This ad hoc committee presented draft ordinance proposals to the Animal Welfare Action Coalition which has discussed them at several meetings and provided additional input. Additional discussion has occurred at several Animal Control Commission meetings and a public hearing was held on November 2, 2005, after which additional changes were made to the proposals. Common Council members received an initial briefing prior to the public hearing.

Initial drafts of county ordinances provided by the committee to the County Commissioners were dismissed as too restrictive and not a priority. The committee is reviewing its county ordinance proposals following AWAC input and is working with the county legal department to move them forward.

The following is the tentative timeline for CITY ordinance revisions:

November 29, 2005: Consideration of final proposal by Board of Public Works.

December 7, 2005: Common Council First Reading (no discussion or vote)

December 14, 2005: Common Council Committee of the Whole (discussion/public input)

December 21, 2005: Common Council Final Action (discussion, input, vote)

January 2006: New ordinances effective after publication.

Note: All public comment will be shared with the Mayor, Council and board/commission members. Please feel free to forward additional comments to: Department of Public Works, PO Box 100, Bloomington, IN 47402 or to alonsoj@bloomington.in.gov

Title 7

ANIMALS

Chapters:

- 7.01 Definitions
- 7.16 Commercial Animal Establishment Permits
- 7.21 Kennel Permits
- 7.22 Breeders
- 7.24 Restraint
- 7.28 Nuisance
- 7.32 Impoundment
- 7.36 Animal Care
- 7.40 Wild Animals
- 7.42 Reptiles
- 7.44 Rabies
- 7.48 Adopted Animals
- 7.52 General Provisions

Deleted: 7.12 Licensing

Chapter 7.01

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DEFINITIONS

Sections:

7.01.010 Definition of terms.

As used in this title, the following terms mean, unless otherwise designated:

"Abandoned Animal" means any animal whose owner/guardian has knowingly, intentionally or recklessly left it unattended, without proper food, water or shelter, for twenty-four (24) hours or more.

"Altered animal" means any animal which has been spayed or neutered.

"Animal" means any live, nonhuman vertebrate creature, domestic or wild.

~~"Performing Animal Exhibition - Permanent"~~ means any spectacle, display, act or event other than circuses, in which performing animals are used perform or are displayed, with the exception of education programs presented by persons or organizations with proper state and federal education permits, as required, and which are perpetual in nature and in a stationary location.

~~"Performing Animal Exhibition - Transient"~~ means any spectacle, display, act or event other than circuses, in which performing animals are used perform or are displayed, with the exception of education programs presented by persons or organizations with proper state and federal education permits, as required, and which are traveling shows of a temporary duration.

"At large animal" means a stray animal or any animal shall be deemed "at large" when it is not under restraint whose owner/guardian knowingly, intentionally, or recklessly allows the animal to stray beyond premises owned, lawfully occupied or controlled by the owner/guardian unless under restraint. This section does not apply to dogs engaged in lawful hunting accompanied by the owner/guardian or custodian.

"Auctions" means any place or facility where domestic livestock animals are regularly bought, sold, or traded, except for those facilities otherwise defined in this chapter.

"Circus" means a commercial variety show featuring animal acts for public entertainment.

"Commercial animal establishment" means any major and/or minor non-municipal animal shelter/sanctuary, pet shop, auction, riding school or stable, zoological park, circus or performing animal exhibition.

"Commercial kennel" means any individual person engaged in owning or harboring more than four (4) animals dogs and cats over the age of six (6) months, any one (1) of which is unaltered; or engaged in the business of boarding, training for a fee and/or grooming animals.

"Domestic Livestock" means any animal, other than a domestic pet, that is a member of one (1) of the following species:

bison;
elk;
poultry;
cattle;
donkey;
horse;
goat;
llama;
mule;
ostrich;
pig; or
sheep.

"Domestic ~~pet animals~~" means any animal that is a member of one (1) of the following species:

dog (Canis familiaris)
cat (Felis cattus or Felis domesticus)
~~cattle (Bos domesticus or Bos taurus or Bos indicus)~~
~~horse (Equus caballus)~~
~~donkey (Equus asinus)~~
~~pig (Sus scrofa)~~
~~sheep (Ovis aries)~~
~~goat (Capra hircus)~~
rabbit (Oryctolagus cuniculus)
mouse (Mus musculus)
rat (Rattus rattus)
reptile (Reptilis) as defined herein
guinea pig (Cavis porcellus)
chinchilla (Chinchilla laniger)
hamster (Mesocricetus auratus)
gerbil (Gerbillus gerbillus)
ferrets (Mustela putorius furo)

"Exotic Animal" means an animal belonging to a species that is not native to the United States, or an animal that is a hybrid or cross between a domestic animal and an animal that is not native to the United States.

"Feral Cat" means a cat that has lived its life with little or no human contact, is not socialized and has reverted to a wild state.

"Feral Cat Colony" means a group of more than six (6) altered feral cats owned or harbored by a person who provides adequate food, water and shelter.

"Harboring" means the actions of any person that permit any animal habitually to remain or lodge or to be fed within his home, store, enclosure, yard or place of business or any premises on which such person resides or controls. An animal shall be presumed harbored if it is fed or sheltered for three (3) consecutive days.

"Major breeder" means any person who intentionally or unintentionally causes or allows the breeding of more than one (1) litter of dogs or cats of one litter per female dog or cat in a twelve (12) month period, or makes more than one (1) cat or dog available for breeding purposes in a twelve (12) month period; or any person individual who offers for sale, sells, trades, receives any compensation or gives away more than one (1) litter of dogs or cats in a twelve (12) month period, with the exception of a litter of dogs or cats taken to the animal shelter.

"Major pet shop" means any retail establishment engaging in the purchase and/or sale of cats and/or dogs, either solely or in addition to the purchase and/or sale of other species of animal.

"Minor breeder" means any person who intentionally or unintentionally causes or allows the breeding of one (1) litter of dogs or cats per twelve (12) month period, or makes one (1) dog or cat available for breeding purposes per twelve (12) month period; or any individual person who offers for sale, sells, trades, receives any compensation for or gives away one (1) litter of dogs or cats within a twelve (12) month period, with the exception of a litter of dogs or cats taken to the animal shelter or animals that are altered prior to being re-homed; or any person who owns one (1) or more unaltered dogs and/or cats that are found to be in violation of Section 7.24.

"Minor pet shop" means any retail establishment engaging in the purchase and sale of any species of animal, with the exception of cats and dogs.

"Municipal Animal shelter" means any facility operated by a ~~humane society or~~ municipal agency, or its authorized agents for the purpose of impounding or caring for animals held under the authority of this title or of state law.

"Noncommercial kennel" means any ~~individual person~~ engaged in owning or harboring, with the exception of dogs and/or cats fostered for the City of Bloomington Animal Care & Control Department, more than ~~four altered animals over the age of six months~~ four (4) altered dogs; more than six (6) altered cats; or more than a total of ten (10) altered dogs and cats combined.

"Non-Municipal Animal Shelter/Sanctuary" means any facility operated by a person or organization other than a municipality for the purpose of harboring and/or re-homing animals.

"Owner/Guardian" means a person owning or harboring one (1) or more animals for a period of longer than twenty-one (21) days.

"Person" means any individual, firm, association, joint stock company, syndicate, partnership, or corporation.

~~"Pet" means any animal kept for pleasure rather than utility.~~

"Potentially Dangerous" means any of the following:

- (a) Any animal which, when unprovoked, on two (2) separate occasions within the prior thirty-six (36) month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the animal are off of the property of the owner/guardian or keeper of the animal.
- (b) Any animal which, when unprovoked, bites a person causing an injury that is not a severe injury as defined below.
- (c) Any animal which, when unprovoked and off the property of the owner/guardian or keeper of the animal, on two (2) separate occasions within the prior thirty-six (36) month period, has bitten or otherwise caused injury to a domestic animal, that is not a severe injury as defined below.

"Public nuisance" means any animal or animals that:

- (1) Molest passersby or passing vehicles;
- (2) Attack other animals;
- (3) Damage public property or private property;
- (4) Bark, whine or howl in an excessive or continuous fashion;
- (5) Defecate on public or private property, other than the owner/guardian's/harbinger's property, unless the waste is immediately removed and disposed of in a sanitary manner by the animal's owner/guardian/harbinger; or
- (6) Otherwise interferes with the free use and comfortable enjoyment of life or property.

"Reptile" means any air-breathing vertebrate of the class Reptilia, with the exception of:

- (1) Any reptile on the Federal Endangered or Threatened Species list or on the Convention or International Trade in Endangered Species List ~~Appendix 1, as amended~~;
- (2) Any venomous reptile, including front- or rear-fanged reptiles;
- (3) Any python of a species which naturally exceeds twelve feet in length;
- (4) All crocodylians, including alligators, caimans, and crocodiles;
- (5) Monitor lizards; ~~and~~
- (6) Anacondas;
- (7) Any reptile of a species native to Indiana; or
- (8) Any reptile protected by state or federal law.

"Research laboratory" means any animal research facility registered with the United States Department of Agriculture under authority of the Federal Laboratory Animal Welfare Act, 71 United States Code Section 2132 et seq.

"Restraint" means the securing of an animal by a leash or lead or confining it within the real property limits of property owned, lawfully occupied or controlled by its owner/guardian.

"Riding school or stable" means any place that has available for hire, boarding, and/or riding instruction, any horse, pony, donkey, mule or burro.

"Service dogs" means any dog engaged in working or training to work for the assistance of hearing or sight impaired, or physically handicapped or disabled persons.

"Severe injury" means any physical injury to a human being or domestic pet or domestic livestock that results in multiple bites, broken bones, muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

"Stray" means any animal that does not appear, upon reasonable inquiry, to have an owner/guardian.

"Tether" means attaching a domestic pet to a stationary object or pulley run by means of a chain, rope, tether, cable, or similar restraint. "Tether" does not include the use of a leash to walk a domestic pet.

"Trap-Neuter-Return" means a full management plan in which feral cats already living outdoors are humanely trapped, then evaluated, vaccinated, sterilized and eartipped by veterinarians. Kittens under 10 weeks old are adopted into good homes if they become socialized. Healthy adult cats too wild to be adopted are returned to their familiar habitat under the lifelong care of volunteers.

"Veterinary hospital" means any establishment maintained and operated by a veterinarian for surgery, diagnosis, and treatment of diseases and injuries of animals.

"Vicious animal" means any ~~animal that by its behavior constitutes an immediate and serious physical threat to human beings or animals~~ of the following:

- (1) Any animal which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being or domestic pet.
- (2) Any animal previously determined to be and currently listed as a potentially dangerous animal which, after its owner/guardian or keeper has been notified of this determination, continues the potentially dangerous behavior as defined herein or is maintained in violation of Chapter 7.24.

"Wild animals" means any animal not a domestic animal, with the exception of small, nonpoisonous aquatic or amphibious animals and ~~small cage~~ birds of the order Psittaciformes, canaries, and finches.

"Wildlife rehabilitator" means any ~~person or persons individual or individuals~~ that acquire the necessary state and federal permits to allow the rehabilitation of wildlife in their homes, on their property or in a professional facility, with the intent of releasing such animals according to state and federal guidelines.

"Zoological park" means any facility, other than a pet shop or kennel, displaying or exhibiting, without the predominant purpose of selling, one (1) or

more species of non-domesticated animals operated by a person or government agency. The facility must be accredited by the American Zoological Association (AZA) or The Association of Sanctuaries (TAOS).

(Ord. 99-39 §§ 1--14, 1999; Ord. 98-27 §§ 1, 2, 3, 1998; Ord. 85-23 § 1, 1985; Ord. 78-20 § 1, 1978; Ord. 76-14 § 1 (part), 1976).

Chapter 7.16

COMMERCIAL ANIMAL ESTABLISHMENT PERMITS

Sections:

- 7.16.010 Permits--General.
- 7.16.020 Inspection of animals and premises authorized.
- 7.16.030 Obtaining a permit.
- 7.16.040 Standards for commercial animal establishments.
- 7.16.050 Commercial animal establishment permit period.
- 7.16.060 Fees.
- 7.16.070 Reclassification.
- 7.16.080 Violations.

7.16.010 Permits--General.

No person shall operate a commercial animal establishment, or non-municipal animal shelter/sanctuary, except for the City of Bloomington Animal Shelter, without first obtaining a permit in compliance with this chapter. Every facility regulated by this chapter shall be considered a separate enterprise and shall require an individual permit. (Ord. 99-39 § 19, 1999; Ord. 77-74 § 2 (part), 1977).

7.16.020 Inspection of animals and premises authorized.

It shall be a condition to the issuance of any permit required by this chapter that:

- (a) The senior and staff animal control officers of the City and/or their designees shall be permitted to inspect the premises and all animals located thereon where such animals are harbored.
- (b) All reports of such inspection shall be in writing and maintained by the senior animal control officer.
- (c) The senior animal control officer, staff animal control officers, and/or their designees is authorized to enter the structure or premises wherein a commercial animal establishment is maintained (or believed to be maintained) at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures.
- (d) If the owner or those in possession of a structure or premises wherein a commercial animal establishment is maintained (or believed to be maintained) refuse inspection of said establishment, the senior animal control officer, staff animal control officers, and/or their designees may obtain an inspection warrant from any court of record in the county in which the establishment is located in order to determine if the establishment is maintained in accordance with the Animal Title of the Bloomington Municipal Code.

(Ord. 81-101 § 1 (part), 1981; Ord. 77-74 § 2 (part), 1977).

7.16.030 Obtaining a permit.

Applicants must apply for permits required by this chapter with the City of Bloomington Animal Care and Control Department.

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APPENDIX 1¶
Species¶ ... [1]

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Chapter 7.12¶
LICENSING¶
Sections:¶
7.12.010 Licensing required-Exceptions.¶
7.12.020 Obtaining a license.¶
7.12.030 Tags.¶
7.12.040 Fees.¶
7.12.050 License period.¶
7.12.060 Use of a license for another animal.¶
7.12.070 Violations.¶
¶
7.12.010 Licensing required-Exceptions.¶
Any person owning, harboring, or having custody of a dog or cat over six months of age within the city must obtain a license for it under this chapter unless that person owns the animal under authority of either a kennel or commercial animal establishment permit. No license shall be required for service dogs. (Ord. 99-39 § 15, 1999; Ord. 76-14 § 1 (part), 1976).¶
¶
7.12.020 Obtaining a license.¶
Applications for a license shall be made to the senior animal control officer ... [2]

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- (a) The application must contain:
 - (1) information ~~as to~~ whether the applicant has been convicted of cruelty to animals; Deleted: , in addition to
 - (2) a statement that the applicant complies and will comply with the regulations promulgated under authority of Section 17.08.020 of this code; and, Deleted: ,
 - (3) that ~~the applicant~~ authorizes the senior and staff animal control officers ~~or their designees~~ to inspect ~~the applicant's~~ facilities and animals. Deleted: ,
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- (b) The permit shall be issued when the applicant complies with the laws and regulations pertaining to the issuance of permits, and pays the fee required.
- (c) If the applicant withholds or falsifies any information on the application, the permit shall not be issued, and any permit issued upon false or withheld information shall be ~~revoked~~. Deleted: null and void.
- (d) No permit to operate a commercial animal establishment shall be issued to an applicant who has been convicted of cruelty to animals without review by the Animal Control Commission. (Ord. 81-101 ~~§§~~ 1 (part), 2 (part), 1981; Ord. 77-74 ~~§~~ 2 (part), 1977). Deleted: commission.
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7.16.040 Standards for commercial animal establishments.
In order to be eligible to obtain a permit, a commercial animal establishment must:

- (a) Be operated in such a manner as not to constitute a public nuisance;
- (b) Provide an isolation area for animals which are sick or diseased to be sufficiently removed so as not to endanger the health of other animals;
- (c) Keep all animals caged, within a secure enclosure or under the control of the owner/guardian or operator at all times;
- (d) With respect to all animals kept on the premises, comply with all of the provisions of this title providing for the general care of animals;
- (e) Not sell animals which are unweaned or obviously diseased. (Ord. 77-74 ~~§~~ 2 (part), 1977). Deleted: §
- (f) Be in compliance with all zoning laws.

7.16.050 Commercial animal establishment permit period.
The commercial animal establishment permit period shall begin on January 1st and shall run for one (1) year. Applicants requiring a permit during the year shall pay a prorated fee for the remaining portion of the year. Applications must be made prior to the establishment of a commercial animal establishment. (Ord. 99-39 ~~§~~ 20, 1999; Ord. 77-74 ~~§~~ 2 (part), 1977). Deleted: within ten days of
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7.16.060 Fees.

- (a) Fees for permits shall be as follows:
 - (1) For each riding school or stable \$100.00;
 - (2) For each auction \$500.00;
 - (3) For each zoological park \$500.00;
 - (4) For each circus or animal exhibition - transient \$1,000.00 per day; Deleted: ,
 - (5) For each animal exhibition - permanent \$500.00 per year Deleted: performing
 - (6) For each minor pet shop \$250.00; Deleted: 500
 - (7) For each major pet shop \$500.00.
 - (8) For each non-municipal animal shelter/sanctuary: \$0.00 Deleted: 6
private/\$0.00 non-profit
- (b) No fee shall be required of any municipal animal shelter, research laboratory, or government-operated zoological park. (Ord. 99-39 ~~§§~~ 21, 22, 1999; Ord. 77-74 ~~§~~ 2 (part), 1977). Deleted: §§
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7.16.070 Reclassification.

Any person who has a change in the category under which the commercial animal establishment permit was issued shall report the change to the City of Bloomington Animal Care and Control Department and apply for the new permit required within thirty (30) days. Appropriate changes, including pro rata credit for the previous permit, shall be made by the City. (Ord. 99-39 § 23, 1999; Ord. 77-74 § 2 (part), 1977).

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7.16.080 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (b) Persons who violate any provision of this chapter shall be subject to a fine of double the permit fee for the first offense, with the fine for each subsequent offense of this chapter increasing by an increment of double the permit fee. In the event that the animal establishment permit does not require a fee, the fine for a first offense shall be twenty-five dollars (\$25.00), with the fine for each subsequent offense of this chapter increasing by an increment of fifty dollars (\$50.00).
- (c) In the event the person has no additional violations of this chapter for a period of twelve (12) consecutive months, the fine for any violation of this chapter after that period shall be double the permit fee for the first offense, with the fine for each subsequent offense increasing by an increment of double the permit fee. In the event that the animal establishment permit does not require a fee, the fine for a first offense shall be twenty-five dollars (\$25.00), with the fine for each subsequent offense of this chapter increasing by an increment of fifty dollars (\$50.00). (Ord. 99-39 § 24, 1999; Ord. 81-101 § 3 (part), 1981; Ord. 77-74 § 2 (part), 1977).

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Chapter 7.21

KENNEL PERMITS

Sections:

- 7.21.010 Kennel permits required.
- 7.21.020 Obtaining non-commercial kennel permits.
- 7.21.025 Obtaining commercial kennel permits.
- 7.21.026 Obtaining feral cat colony permits
- 7.21.030 Inspection.
- 7.21.040 Standards for non-commercial kennels.
- 7.21.050 Standards for commercial kennels.
- 7.21.055 Standards for feral cat colonies
- 7.21.060 Kennel permit periods.
- 7.21.070 Fees.
- 7.21.080 Reclassification.
- 7.21.090 Violations.

7.21.010 Kennel permits required.

- (a) No person shall operate a commercial or non-commercial kennel or feral cat colony without first obtaining a permit from the City of Bloomington Animal Care and Control Department in accordance with this chapter.

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(b) No permit shall be issued unless the proposed operation is in compliance with all zoning laws. (Ord. 99-39 §§ 26 (part), 27, 1999).

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7.21.020 Obtaining non-commercial kennel permits.

Applications for non-commercial kennel permits shall be made to the City of Bloomington Animal Care and Control Department.

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(a) The application for a non-commercial kennel permit shall include:

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- (1) the name, address, and telephone number of the applicant;
- (2) the description (species, breed, sex, age and coloration) of and proof of rabies vaccination for each animal to be housed in the kennel; and,

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- (3) a statement as to whether the applicant has ever been convicted of the offense of cruelty to animals.

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(b) If the applicant withholds or falsifies any information on the application, no permit shall be issued and any permit previously issued on false or withheld information shall be revoked.

(c) No person previously convicted of cruelty to animals shall be issued a kennel permit without prior review by the Animal Control Commission. (Ord. 99-39 §§ 26 (part), 28, 1999).

Deleted: animal control commission. If the proposed or existing site of a non-commercial kennel is not located in an area zoned for kennels, the application shall be denied. If the application is denied as a result of zoning, the applicant shall, within a period not to exceed two months, make an application to the city board of zoning appeals requesting a zoning variance. If such variance is granted, and all other requirements have been satisfied, the application shall be accepted.

7.21.025 Obtaining commercial kennel permits.

Applications for commercial kennel permits shall be made to the City of Bloomington Animal Care and Control Department.

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(a) The application for a commercial kennel permit shall include:

Deleted: city controller's office or any animal control officer.

- (1) the name, address, and telephone number of the applicant;
- (2) a statement as to whether the applicant has ever been convicted of the offense of cruelty to animals; and,
- (3) a statement of the total capacity of the kennels used for the purposes of Class B, Class C and Class D commercial kennel permits.

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(b) Applications for Class A commercial kennel permits must include the description (species, breed, sex, age and coloration) of each animal to be housed in the kennel.

(c) If the applicant withholds or falsifies any information on the application, no permit shall be issued and any permit previously issued on false or withheld information shall be revoked.

(d) No person previously convicted of cruelty to animals shall be issued a kennel permit without prior review by the Animal Control Commission. (Ord. 99-39 §§ 26 (part), 29, 1999).

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7.21.026 Obtaining feral cat colony permits

Applications for feral cat colony permits shall be made to the City of Bloomington Animal Care and Control Department.

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(a) The application for a feral cat colony permit shall include:

- (1) the name, address, and telephone number of the applicant;
- (2) the description (breed, sex, age and coloration) of and proof of rabies vaccination for each cat to be housed in the colony; and,
- (3) a statement as to whether the applicant has ever been convicted of the offense of cruelty to animals.

(b) If the applicant withholds or falsifies any information on the application, no permit shall be issued and any permit previously issued on false or withheld information shall be revoked.

(c) No person previously convicted of cruelty to animals shall be issued a feral cat colony permit without prior review by the Animal Control Commission. (Ord. 99-39 §§ 26 (part), 28, 1999).

7.21.030 Inspection.

It shall be a condition to the issuance of any permit required by this chapter that:

- (a) The senior and staff animal control officers of the City and/or their designees shall be permitted to inspect the structure and/or premises wherein a kennel or colony are maintained (or believed to be maintained) and all animals located thereon where such animals are harbored.
- (b) All reports of such inspections shall be in writing and maintained by the senior animal control officer.
- (c) The senior animal control officer, staff animal control officers, and/or their designees is authorized to enter the structure or premises wherein a kennel or colony are maintained (or believed to be maintained) at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures.
- (d) If the owner or those in possession of a structure or premises wherein a kennel or colony is maintained (or believed to be maintained) refuse inspection of said kennel or colony, the senior animal control officer, staff animal control officers, and/or their designees may obtain an inspection warrant from any court of record in the county in which the kennel or colony is located in order to determine if the kennel or colony is maintained in accordance with the Animal Title of the Bloomington Municipal Code.

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(Ord. 99-39 §§ 26 (part), 30, 1999).

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7.21.040 Standards for non-commercial kennels.

All non-commercial kennels shall:

- (a) Operate in such a manner as to not constitute a public nuisance; and
- (b) Comply with all of the provisions of Chapter 7.36 Animal Care, which provides standards for the general care of animals. (Ord. 99-39 §§ 26 (part), 31, 1999).

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7.21.050 Standards for commercial kennels.

All commercial kennels shall:

- (a) Operate in such a manner as to not constitute a public nuisance;
- (b) Comply with all of the provisions of Chapter 7.36 Animal Care, which provides for the general care of animals;
- (c) Provide an isolation area for animals which are sick or diseased to be sufficiently removed so as to not endanger the health and well being of other animals;
- (d) Keep all animals caged within a secure enclosure or under the control of the owner/guardian or representative of the kennel at all times;
- (e) Provide each animal sufficient space to stand up, lie down and turn around in a natural position without touching the sides or top of the enclosure;
- (f) Provide individual kennels for each animal being harbored for any portion of a twenty-four (24) hour period, with the exception of yard or other play areas used for the purpose of dog daycare. Kennels intended for single occupancy shall not house more than one (1) animal, with the exception of animals that are normally housed together in a home environment;

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(Ord. 99-39 §§ 26 (part), 32, 1999).

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7.21.055 Standards for feral cat colonies

All feral cat colonies shall:

- (a) Operate in such a manner as to not constitute a public nuisance; and

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(b) Comply with all of the provisions of Chapter 7.36 Animal Care, which provides standards for the general care of animals. (Ord. 99-39 §§ 26 (part), 31, 1999).

7.21.060 Kennel permit periods.

- (a) Non-commercial kennel permits shall be valid for a period of one (1) year from the date of issuance. An application must be made within ten (10) days of the creation of a kennel.
- (b) Commercial kennel permits shall be valid for one (1) year beginning January 1st of each year. Applicants requiring a commercial kennel permit during the year shall pay a prorated fee for the remaining portion of the current year. An application must be made prior to the creation of a kennel. (Ord. 99-39 §§ 26 (part), 33, 1999).
- (c) Feral cat colony permits shall be valid for a period of one (1) year from the date of issuance. An application must be made prior to the creation of a colony.

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7.21.070 Fees.

(a) The fee for non-commercial kennel permits shall be:

- (1) More than 4 altered dogs \$25.00; or
 - (2) More than 6 altered cats \$25.00; or
 - (3) More than a total of 10 altered dogs & cats combined \$25.00;
- or
- (4) More than a total of 14 altered dogs & cats combined \$50.00;

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9-12 animals 50.00
additional animals

and
(5) Additional altered dogs & cats combined in increments of 4 \$50.00,

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plus \$25.00 per additional increment

(b) The fee for commercial kennel permits shall be:

- (1) Class A, owning:
 - (A) 5-8 animals \$100.00
 - (B) 9-12 animals \$150.00
 - (C) additional animals in increments of 4 \$150.00, plus \$50.00
 per additional increment
- (2) Class B, boarding:
 - (A) 1-25 kennels \$100.00
 - (B) 26-50 kennels \$250.00
 - (C) additional kennels in increments of 25 \$250.00, plus \$200.00 per additional increment
- (3) Class C, training \$75.00
- (4) Class D, grooming \$50.00

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(c) The fee for feral cat colonies shall be \$0.00

(d) No fee shall be required of any veterinary hospital or municipal animal shelter, research laboratory or government operated zoological park.

(e) Persons whose establishments operate under more than one (1) class as defined by this chapter shall be required to apply for a permit for each applicable class. (Ord. 99-39 §§ 26 (part), 34, 1999).

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7.21.080 Reclassification.

Any person or business who has a change in class under which the commercial and/or non-commercial kennel permit was issued shall report the change to the City of Bloomington Animal Care and Control Department and apply for a new permit within thirty (30) days of any such change. (Ord. 99-39 §§ 26 (part), 35, 1999).

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7.21.090 Violations.

(a) Any animal control officer may issue any person or business in violation of this chapter a notice of ordinance violation. The penalty established

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in subsection (b) shall be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours of the notice of ordinance violation. In the event that such payment is not made within seventy-two (72) hours, the City may file a proceeding in the county court of competent jurisdiction to collect the applicable penalty.

(b) Persons or businesses who violate any provision of this chapter shall be subject to a fine of double the applicable permit fee for the first offense, with the fine for each subsequent offense of this chapter increasing by an increment of double the permit fee. In the event that the kennel permit does not require a fee, the fine for a first offense shall be twenty-five dollars (\$25.00), with the fine for each subsequent offense of this chapter increasing by an increment of fifty dollars (\$50.00).

(c) In the event that the person or business has no additional violations of this chapter for a period of twelve (12) consecutive months, the fine for any violation of this chapter after that period shall be double the applicable permit fee for the first offense, with the fine for each subsequent offense increasing by an increment of double the applicable permit fee. In the event that the kennel permit does not require a fee, the fine for a first offense shall be twenty-five dollars (\$25.00), with the fine for each subsequent offense of this chapter increasing by an increment of fifty dollars (\$50.00). (Ord. 99-39 §§ 26 (part), 36, 1999).

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Chapter 7.22

BREEDERS

Sections:

- 7.22.010 Minor breeder permit required.
- 7.22.020 Major breeder permit required.
- 7.22.030 Obtaining breeder permits.
- 7.22.040 Inspection.
- 7.22.050 Breeder permit periods.
- 7.22.060 Fees.
- 7.22.070 Reclassification.
- 7.22.080 Violations.

7.22.010 Minor breeder permit required.

No person or business shall be a minor breeder without obtaining a permit in compliance with this chapter.

(a) Minor breeders shall:

- (1) Breed only one (1) dog or one (1) cat which results in the birthing of a maximum of one (1) litter in a twelve (12) month period;
- (2) Not offer for sale, sell, trade, receive any compensation for or give away more than one (1) litter of dogs or one (1) litter of cats in a twelve (12) month period;
- (3) Keep records for the duration of the permit as to the birth of each litter of dogs or cats as may be required by the City of Bloomington Animal Care and Control Department;
- (4) Keep records of the name, address and telephone number of each buyer or new owner/guardian of any dog or cat sold or transferred;
- (5) Furnish to each buyer or new owner/guardian of an animal the minor breeder permit number of the minor breeder in order that the new owner/guardian has proof and assurance that the animal was legally bred;

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- Deleted: (a) A minor breeder
- Deleted: shall be obtained by:¶
- Deleted: (1) Any individual who intentionally or unintentionally causes or allows the breeding of a cat or dog, or makes a cat or dog available for breeding purposes; or¶
- Deleted: (2) Any person who offers for sale, sells, trades, receives for any compensation or gives away any litter of dogs or cats, with the exception of litters taken to the animal shelter.¶
- Deleted: (b) Minor breeders shall also:¶
- Deleted: (1) Breed only one dog or one cat which results in the birthing of a maximum of one litter in a twelve-month period;¶
- Deleted: (2) Not offer for sale, sell, trade, receive any compensation or give away more than one litter of dogs or one litter of cats in a twelve month period, with the exception of a litter of dogs or cats taken to the animal shelter;¶
- Deleted: (3) Keep records
- Deleted: animal control department;

- (6) Not offer a puppy or kitten under the age of eight (8) weeks of age for sale, trade, or other compensation or free giveaway, with the exception of animals taken to the animal shelter;
- (7) Recommend that any animal sold, transferred or given away be examined by a licensed veterinarian within one (1) week of the date of transfer and notify the new owner/guardian of state requirements for rabies vaccinations ; and
- (8) List the person or business minor breeder permit number on all public notices advertising the sale or free giveaway of litters of or individual puppies or kittens.

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(b) Any owner/guardian or person having custody of a dog or cat which has been altered within fourteen (14) weeks after giving birth to a litter or who relinquishes the adult dog or cat and the litter to the animal shelter within fourteen (14) weeks of the birth date of the litter shall have all permit requirements waived. (Ord. 99-39 §§ 37 (part), 38, 1999).

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7.22.020 Major breeder permit required.

No person or business shall be a major breeder without obtaining a permit in compliance with this chapter.

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Major breeders shall:

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 .(1) Any individual who intentionally or unintentionally causes or allows the breeding of a cat or dog, or makes a cat or dog available for breeding purposes; or
 .(2) Any person who offers

- (a) Not allow the birthing of more than one (1) litter per female dog or cat in a twelve (12) month period;
- (b) Keep records for twelve (12) months as to the birth of each litter of dogs or cats as may be required by the City of Bloomington Animal Care and Control Department;
- (c) Keep records for twenty-four (24) months of the name, address and telephone number of each buyer or new owner/guardian of any dog or cat sold or transferred;
- (d) Furnish to each buyer or new owner/guardian of an animal the major breeder permit number of the major breeder in order that the new owner/guardian has proof and assurance that the animal was legally bred;
- (e) Not offer a puppy or kitten under the age of eight (8) weeks of age for sale, trade, or other compensation or free giveaway, with the exception of animals taken to the animal shelter;
- (f) Recommend that any animal sold, transferred or given away be examined by a licensed veterinarian within one (1) week of the date of transfer and notify the new owner/guardian of state requirements for rabies vaccinations; and
- (g) List the person or business major breeder permit number on all public notices advertising the sale or free giveaway of litters of or individual puppies or kittens. (Ord. 99-39 §§ 37 (part), 39, 1999).

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Deleted: .(b) Major breeders shall also:
 .(1) Not allow the birthing of more than one litter per female dog or cat in a twelve-month period;
 .(2) Keep records as to the birth of each litter of dogs or cats as may be required by the animal control department;
 .(3) Keep records

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7.22.030 Obtaining breeder permits.

Applications for minor and major breeder permits shall be made to the City of Bloomington Animal Care and Control Department.

(a) The application shall include:

- (1) the name, address and telephone number of the applicant;
- (2) a statement as to whether the applicant has ever been convicted of the offense of cruelty to animals; and,
- (3) descriptions (species, breed, sex, age, coloration) of each animal under the permit.

(b) If the applicant withholds or falsifies any information on the application, no permit shall be issued and any permit previously issued on false or withheld information shall be revoked.

(c) No person previously convicted of cruelty to animals shall be issued a kennel permit without prior review by the Animal Control Commission.

(d) An owner/guardian must apply for a minor or major breeder permit within twenty-one (21) days of the birthing of a litter or upon receiving a citation for failure to restrain their unaltered animal. . (Ord. 99-39 §§ 37 (part), 40, 1999).

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7.22.040 Inspection.

It shall be a condition to the issuance of any permit required by this chapter that:

(a) The senior and staff animal control officers of the City and/or their designees shall be permitted to inspect the structure or premises wherein an establishment regulated under this chapter is maintained (or believed to be maintained) and all animals located thereon where such animals are harbored.

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(b) All reports of such inspections shall be in writing and maintained by the senior animal control officer.

(c) The senior animal control officer, staff animal control officers, and/or their designees are authorized to enter the structure or premises wherein an establishment regulated under this chapter is maintained (or believed to be maintained) at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures.

(d) If the owner or those in possession of a structure or premises wherein an establishment regulated under this chapter is maintained (or believed to be maintained) refuse inspection of said establishment, the senior animal control officer, staff animal control officers, and/or their designees may obtain an inspection warrant from any court of record in the county in which the establishment is located in order to determine if the establishment is maintained in accordance with the Animal Title of the Bloomington Municipal Code. (Ord. 99-39 §§ 37 (part), 41, 1999).

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7.22.050 Breeder permit periods.

(a) Minor breeder permits shall be valid for a period of one (1) year from the date of issuance.

(b) Major breeder permits shall be issued on a litter by litter basis and shall be valid for one (1) year from the date of application. (Ord. 99-39 §§ 37 (part), 42, 1999).

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7.22.060 Fees.

Fees for breeder permits shall be:

(a) Minor breeder permit \$100.00

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(b) Minor breeder permit for each unrestrained unaltered animal \$100.00

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(c) Major breeder permit \$150.00 per litter

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(Ord. 99-39 §§ 37 (part), 43, 1999).

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7.22.070 Reclassification.

Any person or business who has a change in the category under which the minor or major breeder permit was issued shall report the change to the City of Bloomington Animal Care and Control Department and apply for a new permit within thirty (30) days of any such change. (Ord. 99-39 §§ 37 (part), 44, 1999).

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7.22.080 Violations.

(a) Any animal control officer may issue any person or business in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) shall be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours of the notice of ordinance violation. In the event that such payment is not made within seventy-two (72) hours, the City may file a proceeding in the county court of competent jurisdiction to collect the applicable penalty.

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(b) Persons or businesses who violate any provision of this chapter shall be subject to a fine of double the applicable permit fee for the first offense, with the fine for each subsequent offense of this chapter increasing by an increment of double the permit fee.

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(c) In the event that the person or business has no additional violations of this chapter for a period of twelve (12) consecutive months, the fine for any violation of this chapter after that period shall be double the applicable permit fee for the first offense, with the fine for each subsequent offense increasing by an increment of double the applicable permit fee. (Ord. 99-39 §§ 37 (part), 45, 1999).

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Chapter 7.24

RESTRAINT

Sections:

- 7.24.010 General requirements.
- 7.24.020 Animals in heat.
- 7.24.030 Vicious animals.
- 7.24.040 Violations.

7.24.010 General requirements.

All animals except cats which have been neutered or spayed and are wearing identification or are ear tipped in the case of feral cats shall be kept under restraint. However, altered cats not kept under restraint at all times are still subject to Public Nuisance laws cited in Chapter 7.28. (Ord. 77-74 § 4 (part), 1977).

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7.24.020 Animals in heat.

Every female animal in heat shall be confined in a building or secure enclosure in such a manner that the animal cannot come into contact with a male animal of the same species except for planned breeding. (Ord. 77-74 § 4 (part), 1977).

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7.24.030 Vicious animals.

(a) If an animal control officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that an animal is potentially dangerous or vicious, the animal control officer shall request a hearing by the Animal Control Commission for the purpose of determining whether or not the animal in question should be declared potentially dangerous or vicious.

Deleted: Every vicious animal, as determined by the senior animal control officer, shall be confined by the owner within a building or secure enclosure and shall be securely muzzled and restrained or caged whenever off the premises of the owner.

- (1) Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for finding probable cause shall be sworn to and verified by the complainant and shall be provided to the Animal Control Commission.
- (2) The hearing will be held at the next regularly scheduled meeting of the Animal Control Commission and shall be open to the public.
- (3) The owner/guardian of the animal shall be served with notice of the hearing and a copy of any complaints received by certified mail or in person.
- (4) The animal control officer shall notify the owner/guardian of the animal of the date and time of such hearing, at which time he or she may present evidence as to why the animal should not be declared potentially dangerous or vicious.
 - (A) Such evidence may include eyewitness testimony of the incident; or

- (B) Evidence that the action of the animal and the damage sustained by the person or other animal could have reasonably been expected to occur given the circumstances of the event. Such circumstances may include, but are not limited to: willful trespass upon the owner/guardian's property; teasing, tormenting, abusing or assaulting the animal; and/or attempted abuse or assault upon the owner/guardian.
- (5) The Animal Control Commission may consider all relevant evidence, including incident reports, affidavits of witnesses, and whether the incident reasonably indicates whether or not the animal in question is potentially dangerous and/or vicious in ordinary circumstances where the average person could not reasonably be expected to foresee and take measures to prevent injury.
- (6) The Animal Control Commission may decide all issues for or against the owner/guardian of the animal even if the owner/guardian of the animal fails to appear at the hearing.
- (7) After the hearing, the owner/guardian of the animal shall be notified in writing of the determination by certified mail or in person.
 - (A) If a determination is made that the animal is potentially dangerous or vicious, the owner/guardian shall comply with this section's requirements for restraint in accordance with a time schedule established by the Animal Control Commission but in no case more than thirty (30) days after the date of the determination.
 - (B) An animal determined to be vicious may be destroyed by the City of Bloomington Animal Care and Control Department when it is found by the Animal Control Commission that the release of the animal would create a significant threat to the public health, safety, and welfare.
 - (C) If it is determined that an animal found to be vicious shall not be destroyed, the Animal Control Commission may impose reasonable conditions upon the ownership of the animal that protect the public health, safety and welfare.
 - (D) Decisions of the Animal Control Commission are final.
- (b) If upon investigation it is determined by the animal control officer or law enforcement officer that probable cause exists to believe the animal in question poses an immediate threat to public safety, then the animal control officer or law enforcement officer may seize and impound the animal pending the hearing to be held pursuant to this section. The owner/guardian of the animal shall be liable to the City of Bloomington Animal Shelter where the dog is impounded for the costs and expenses of keeping the animal, if the animal is later declared potentially dangerous or vicious.
- (c) A potentially dangerous animal, while on the owner/guardian's property, shall, at all times, be kept indoors, or in a secured enclosure from which the animal cannot escape, and into which children cannot trespass. A potentially dangerous animal may be off the owner/guardian's premises only if it is restrained by a substantial leash, of appropriate length, and if it is under the control of an adult.
- (d) An animal that has been declared vicious may not be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition except to a secured enclosure. When outside, all vicious animals must be confined in a secure enclosure, except when necessary to obtain veterinary care.
 - (1) All such enclosures must be adequately lighted and ventilated and kept in a clean and sanitary condition.

- (2) The enclosure shall have secure sides and a secure top and bottom to prevent the animal from escaping over, under, or through the structure.
- (3) The enclosure shall be kept locked at all times to prevent unintentional opening.
- (4) The enclosure shall include suitable shelter and protection from the elements, and shall provide adequate exercise room, light, ventilation, and sanitation.
- (5) The enclosure shall be approved by the City of Bloomington Animal Care and Control Department prior to its usage for confinement.
- (6) Whenever necessity requires a vicious animal to be outside of the enclosure, the animal shall be securely muzzled and restrained by a leash not exceeding three (3) feet in length, with handgrip, and shall be under the direct control and supervision of the owner/guardian of the animal.
- (e) The owner/guardian of a potentially dangerous or vicious animal shall display clearly visible warning signs on all entry points to the premises on which the animal is maintained warning that a potentially dangerous or vicious animal is being harbored on such property. In addition, at least one sign shall be posted on the enclosure in which the animal is maintained. Signs must inform both children and adults of the presence of a potentially dangerous or vicious animal on the property.
- (f) Any animal classified as potentially dangerous or vicious shall not be used for breeding and shall be altered by a licensed veterinarian within thirty 30 days of such classification unless:
 - (1) A licensed veterinarian certifies in writing that the animal is incapable of reproduction; or
 - (2) A licensed veterinarian certifies in writing that altering the animal would be injurious to the animal's health, provided, however, that if the health condition of the animal is of a temporary nature, then the animal shall be altered immediately after the health condition has been corrected.
- (g) If the animal in question dies, or is sold or transferred, the owner/guardian shall notify the City of Bloomington Animal Care and Control Department of the changed condition and new location of the animal in writing within two (2) working days.
- (h) An owner/guardian may submit one Request for Reconsideration per year to the Animal Control Commission to have the designation of potentially dangerous or vicious removed from his/her animal.
 - (1) The application must be in writing.
 - (2) The application must be given to the City of Bloomington Animal Care and Control Department.
 - (3) The application shall include detailed information about how the change in circumstances or measures taken by the owner/guardian, such as training of the animal, have mitigated the risk to public safety.
 - (4) The Animal Control Commission may hear evidence, both pro and con, as to whether and why the designation should or should not be removed.
 - (5) The Animal Control Commission may make a decision to remove or not to remove such designation.

(Ord. 99-39 § 46, 1999; Ord. 81-101 § 1 (part), 1981; Ord. 77-74 § 4 (part), 1977).

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7.24.040 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in

subsection (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.

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(b) Persons who violate any provision of this chapter shall be subject to the following fine:

- (1) Failure to restrain, first offense, altered animal \$20.00
Fines for each subsequent offense within twelve (12) consecutive months of first offense, increase in increments of \$20.00 per offense.
- (2) Failure to restrain, first offense, unaltered animal \$40.00
Fines for each subsequent offense within twelve (12) consecutive months of first offense, increase in increments of \$40.00 per offense.
- (3) Failure to restrain female animal in heat, first offense \$100.00
Fines for each subsequent offense within twelve (12) consecutive months of first offense, are \$150.00 per offense.
- (4) Failure to restrain vicious animal, or potentially dangerous animal, first offense \$100.00
Fines for each subsequent offense within twelve (12) consecutive months of first offense, are \$150.00 per offense
- (5) Failure to post warning signs for potentially dangerous and/or vicious animals \$50.00
- (6) Failure to notify City of Bloomington Animal Care and Control Department of change of status for potentially dangerous and/or vicious animals \$50.00
- (7) Failure to prevent potentially dangerous and/or vicious animal from breeding \$100.00
- (8) Failure to alter potentially dangerous and/or vicious animal within thirty (30) days of such classification \$100.00
- (9) Failure to comply with any portion of Chapter 7.24, not previously addressed in sections one (1) through eight (8), shall result in a \$100.00 fine.

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(Ord. 99-39 § 47, 1999; Ord. 94-13 § 2, 1994; Ord. 81-101 § 3 (part), 1981; Ord. 77-74 § 4 (part), 1977).

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Chapter 7.28

NUISANCE

Sections:

- 7.28.010 Public nuisance prohibited.
- 7.28.020 Violations.

7.28.010 Public nuisance prohibited.

No owner/guardian shall fail to exercise due care and control of his animals to prevent them from becoming a public nuisance. (Ord. 81-101 § 7 (part), 1981; Ord. 76-14 § 1 (part), 1976).

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7.28.020 Violations.

(a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within

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seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.

- (b) Persons who violate any provision of this chapter shall be subject to a fine of fifty dollars (\$50.00) for the first offense, with the fine of each subsequent offense of this chapter increasing by an increment of fifty dollars (\$50.00).
- (c) In the event the person has no additional violations of this chapter for a period of twelve (12) consecutive months, the fine for any violation of this chapter after that period shall be fifty dollars (\$50.00) for the first offense, with the fine for each subsequent offense increasing by an increment of fifty dollars (\$50.00). (Ord. 99-39 § 48, 1999; Ord. 81-101 § 7 (part), 1981).

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Chapter 7.32

IMPOUNDMENT

Sections:

- 7.32.010 Animals to be impounded.
- 7.32.020 Jurisdiction of animal control officer for impoundment.
- 7.32.030 Notice of impoundment.
- 7.32.040 Impounded animals-- Reclamation.

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7.32.010 Animals to be impounded.

- (a) At-large animals (with the exception of altered cats, that are wearing identification or are ear tipped in the case of feral cats and are not a public nuisance), nuisance animals, animals suspected of being neglected, subjected to cruelty or abandoned, and animals which have bitten persons or other animals may be taken by law enforcement or animal control officers and impounded in the City of Bloomington Animal Shelter.
- (b) In lieu of impounding an animal which is at large, or a public nuisance according to this title, the law enforcement officer or animal control officer may issue to the known owner/guardian of such animal a notice of ordinance violation, and may return the animal to the owner/guardian's property if the animal can be secured safely. (Ord. 99-39 § 49, 1999; Ord. 81-101 §§ 1 (part), 8, 1981; Ord. 77-74 § 5 (part), 1977).

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7.32.020 Jurisdiction of animal control officer for impoundment.

The jurisdiction of animal control officers for purposes of enforcing this chapter shall include, in addition to the municipality of Bloomington itself, all land within four (4) miles of its corporate limits. (Ord. 81-101 § 1 (part), 1981; Ord. 77-74 § 5 (part), 1977).

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7.32.030 Notice of impoundment.

- (a) If ~~by a license tag or other means~~ the owner/guardian of an impounded animal can be identified, the senior animal control officer or his/her designees shall immediately upon impoundment notify the owner/guardian by telephone or mail.
- (b) Animals whose owner/guardians are not identifiable or cannot be notified after reasonable effort shall be held for five (5) calendar days from the date of impoundment, not counting officially recognized holidays, before becoming the property of the City.
- (c) ~~Animals whose owner/guardians have been notified and who do not reclaim their animals within the five (5) day stray period shall also become the property of the City unless the owner/guardian of the animal posts a five~~

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hundred and fifty dollar (\$550.00) bond with the City Controller prior to the expiration of the five (5) day stray period to provide for the animal's care and keeping.

(1) The bond must be valid for thirty (30) days.

(2) The owner/guardian may renew a bond by posting a new bond in the amount of six hundred dollars (\$600.00) prior to the expiration of the original bond, but may only do so once.

(3) If a bond expires and is not renewed, the animal becomes the property of the City.

(d) Any stray animals found as part of a litter of two (2) or more shall become the property of the City and may be placed for adoption or humanely euthanized if not claimed by the owner/guardian within three (3) days of impoundment.

(e) Any stray animal found with severe medical conditions and/or injuries shall be assessed by a veterinarian, whenever possible. Whenever possible, humane care will be provided in order to allow the animal to remain comfortable for the duration of the stray period. However, when an animal's injuries or illnesses are so severe such that the animal can not be maintained in a comfortable fashion, the animal may be euthanized prior to the end of the stray period.

(f) Any medical expenses incurred while the animal is in the care of the City shall be the responsibility of the owner/guardian of the animal should the owner/guardian be identified.

(g) Animals that are the property of the ~~city~~ City may be placed for adoption or humanely euthanized.

(Ord. 81-101 ~~§§~~ 1 (part), 9, 1981; Ord. 77-74 § 5 (part), 1977).

7.32.040 Impounded animals-- Reclamation.

(a) An owner/guardian reclaiming an impounded animal shall pay a board fee as follows, in addition to a fee of \$7 for vaccinations of reclaimed cats and dogs:

<u>(1) Dog, impounded for 1-5 days</u>	<u>\$10.00 per day</u>
<u>(2) Dog, impounded for 6 or more days</u>	<u>\$20.00 per day</u>
<u>(3) Cat or ferret, impounded for 1-5 days</u>	<u>\$5.00 per day</u>
<u>(4) Cat or ferret, impounded for 6 or more days</u>	<u>\$10.00 per day</u>
<u>(5) Horses, goats, pigs, poultry</u>	<u>\$10.00 per day</u>
<u>(6) Other animals</u>	<u>\$5.00 per day</u>

(b) The City of Bloomington Animal Care and Control Department may agree to waive some or all of its fines and fees at the discretion of the Director if the owner/guardian of an unaltered animal agrees to have the animal spayed or neutered as a condition of its release.

(c) A person may reclaim an animal in the custody of the City of Bloomington Animal Care and Control Department upon providing the following:

- (1) proof of ownership,
- (2) identification such as a driver's license,
- (3) payment of redemption fee and any other service/medical fees, as approved by the Director of Bloomington Animal Care and Control.

(d) An animal that has been a previously impounded stray or at-large animal and is now being redeemed for the second or subsequent redemption within the last twelve (12) months, will be required to be

- (1) implanted with a microchip by the City of Bloomington Animal Care and Control Department at the owner/guardian's expense for the purpose of future identification and recovery; and,
- (2) spayed or neutered by a licensed veterinarian at the owner/guardian's expense prior to the shelter relinquishing the animal to the owner/guardian. Should cost be an issue, the City of Bloomington Animal Care and Control Department may enter into a

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Deleted: (b) An owner reclaiming an impounded animal that is not under the jurisdiction of a governmental entity shall pay, in addition to the board fee specified in subsection (a) of this section, a fine of twenty dollars each time the animal is reclaimed. (Ord. 99-39 § 1, 1999).¶

payment agreement with the owner/guardian or the owner/guardian may sign over ownership rights of the animal to the City of Bloomington Animal Care and Control Department.

Chapter 7.36

ANIMAL CARE

Sections:

- 7.36.010 Giving animals as prizes.
- 7.36.020 Poisoning animals.
- 7.36.025 Cruelty, abuse and neglect of animals.
- 7.36.030 Motor vehicle accidents involving animals.
- 7.36.040 Use of devices to induce performance.
- 7.36.050 General animal care.
- 7.36.060 Specific animal care provisions for animals used for drawing vehicles.
- 7.36.070 Abandonment.

7.36.010 Giving animals as prizes.

- (a) No person shall give away any live animal, fish, reptile, or bird as a prize for, or as an inducement to enter any contract, game, or other competition, or as an inducement to enter a place of amusement; or offer such vertebrate as an incentive to enter into any business agreement in which the offer was for the purpose of attracting trade.
- (b) No person shall auction any live animal except domestic livestock.
- (c) Violations. Any animal control officer may issue to any person in violation of this section a notice of ordinance violation. The penalty established in subsection (d) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (d) Persons who violate any provision of this section shall be subject to a fine of one hundred dollars (\$100.00) for each offense. (Ord. 99-39 § 52, 1999; Ord. 81-101 § 11, 1981; Ord. 77-74 § 6 (part), 1977).

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7.36.020 Poisoning animals.

No person shall expose any known poisonous substance, whether mixed with food or not, so that it shall be likely to be eaten by any animal; provided, that it shall not be unlawful for a person to expose on his own property common rat or mouse poison, unmixed or mixed only with vegetable substances. Persons who violate this section shall be subject to a fine of up to two thousand five hundred dollars (\$2,500.00) for each offense. (Ord. 99-39 § 53, 1999; Ord. 77-74 § 6 (part), 1977).

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7.36.025 Cruelty, abuse and neglect of animals.

No person shall torture, beat, mutilate or neglect an animal resulting in serious injury or death to the animal. Persons who violate this section shall be subject to a fine of two thousand five hundred dollars (\$2,500.00) for each offense. (Ord. 99-39 § 54, 1999).

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7.36.030 Motor vehicle accidents involving animals.

Any person who, as the operator of a motor vehicle, strikes a dog or cat, shall at once report the accident to the appropriate law enforcement agency or the City of Bloomington Animal Care and Control Department. Persons who violate this section shall be subject to a fine of fifty dollars (\$50.00) for each offense. (Ord. 99-39 § 55, 1999; Ord. 77-74 § 6 (part), 1977).

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7.36.040 Use of devices to induce performance.

No animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical, or manual devices in a manner that is likely to cause physical injury or suffering. Persons who violate this section shall be subject to a fine of two thousand five hundred dollars (\$2,500.00) for each offense. (Ord. 99-39 § 56, 1999; Ord. 77-74 § 6 (part), 1977).

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7.36.050 General animal care.

(a) Every owner/guardian of an animal within the City shall see that his animal:

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(1) Is kept in a clean, sanitary, and healthy manner and is not confined so as to be forced to stand, sit, or lie in its own excrement;

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(2) Has proper and adequate food, water, shelter, and protection from the weather;

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(3) If diseased or injured, receives care as necessary to prevent suffering and, if diseased, is segregated from other animals so as to prevent the transmittal of the disease to other animals.

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(b) Any domestic pet or feral cat that is owned or harbored and habitually kept outside or repeatedly left outside unattended by an adult person for such periods of time as may cause suffering or endanger the health or well-being of the animal shall be provided with a structurally sound, moisture proof and windproof shelter large enough to keep the animal reasonably clean and dry and provide adequate protection from the cold and heat. Shelter must be placed in a dry area free of debris, feces and standing water.

(c) If multiple animals are present in one location, each animal must have access to shelter and the owner/guardian must meet all standards as detailed in this section.

(d) The shelter must have bedding to provide insulation and protection against cold and dampness and promote the retention of body heat.

(e) Appropriate medical care and grooming of animals must be provided.

(f) No chain or tether shall weigh more than 1/8 of the animal's body weight.

(g) Any chain or tether shall be at least ten (10) feet in length and have swivels on both ends.

(h) Any chain or tether must be attached to a properly fitting buckle-type collar or harness worn by the animal. Choke collars and pinch collars are prohibited for purposes of tethering an animal to a stationary object or cable run. A person may not wrap a chain or tether around a animal's neck. A chain or tether used to restrain an animal must, by design and placement, be unlikely to become entangled.

(i) It shall be unlawful for the owner/guardian of any animal to keep or maintain the animal on a tether for a period of more than ten (10) continuous hours and no more than twelve (12) hours in any twenty-four (24) hour period, or for any duration under conditions, which threaten the health, or well being of the animal.

(j) A muzzle may not be worn continuously as a means for controlling barking.

(k) A person may not restrain an animal in a manner that does not allow the animal to have access to necessary shelter, water and food.

- (l) A person may not restrain an animal in a manner that allows the animal to move outside property owned, lawfully occupied or controlled by the person.
- (m) Any person who owns or harbors any intact female dog or cat shall, during the period that such animal is in heat or in estrus, shall keep such dog or cat in a secured area that prevents a male dog or cat from having access to such female except for controlled breeding permitted by the owner/guardian of the female. Additionally, the female dog or cat shall not be chained or tethered in a manner that prevents her from defending herself or from avoiding a mate.
- (n) It shall be unlawful for any person to place or confine or allow any animal to be confined in such a manner that it must remain in a motor vehicle, trailer or pet carrier under such conditions for such periods of time as may cause suffering or endanger the health or well-being of the animal due to extreme temperatures or lack of food or water.
- (o) No person shall intentionally or unintentionally cause or allow the breeding of more than one (1) litter per female cat or dog in a twelve (12) month period.
- (p) Any animal control officer may issue to any person in violation of this subsection a notice of ordinance violation. The penalty established in subsection (q) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (q) Persons who violate any provision of this section shall be subject to a fine of fifty dollars (\$50.00) for each offense. (Ord. 99-39 § 57, 1999; Ord. 81-101 § 12, 1981; Ord. 77-74 § 6 (part), 1977).

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7.36.060 Specific animal care provisions for animals used for drawing vehicles.

- (a) In addition to the provisions set out in Section 7.36.050 General animal care above, every owner/guardian of an animal used to draw a vehicle for hire within the City shall see that:
 - (1) The animal has adequate flesh and muscle tones;
 - (2) The hooves of the animal are properly trimmed and shod within every eight (8) weeks of work. Acceptable horseshoes for this work are limited to Borium studded type or polyurethane (plastic), studs optional. Records must be kept for twelve (12) months by the owner/guardian of the dates and the name of the blacksmith who shod the animal;
 - (3) The animal is groomed daily;
 - (4) The animal is not over-ridden, driven, or kept, to result in overheating or exhaustion. Animals shall not be worked during the middle of the afternoon during hot days when livestock warnings are issued. Whenever possible during warm weather the driver shall park in the shade. Animals shall not be worked more than two (2) hours without being given a thirty (30) minute rest period. Maximum working period for any one (1) animal shall be ten (10) hours out of every twenty-four (24) hours, and any five (5) out of seven (7) consecutive days.
 - (5) No animal may be whipped by a driver with more than a light touch by a light whip, or in a manner that causes injury or suffering;
 - (6) The speed at which any animal is driven shall not exceed a trot;
 - (7) The animals shall not be left unattended on a street or public way;
 - (8) The harness, bridle, saddle, and any other equipment required or in use is properly fitted, in good working order, free of makeshift

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design, and used so as in no way causes pain or injury to the animal. Twisted wire snaffles, and spurs are not permitted.

- (b) Any animal control officer may issue to any person in violation of this section a notice of ordinance violation. The penalty established in subsection (d e) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (c) To protect the health and safety of the animal and the public, upon a finding that an animal is sick, injured, lame, malnourished, or in any other condition that renders it unfit for drawing a vehicle for hire, any animal control officer may issue an order that the animal is deemed unfit for work and order it removed from the vehicle and the City streets; such order may be appealed within forty-eight (48) hours to the Animal Control Commission which shall, upon hearing all evidence, confirm or deny the order of the animal control officer.
- (d) Persons who violate any provision of this section shall be subject to a fine of fifty dollars (\$50.00) for each offense. (Ord. 99-39 § 58, 1999; Ord. 83-53 § 2, 1983).

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7.36.070 Abandonment.

No owner/guardian of an animal shall abandon such animal. Persons who violate this section shall be subject to a fine of up to five hundred dollars (\$500.00) for each offense. (Ord. 99-39 § 59, 1999; Ord. 83-53 § 3, 1983; Ord. 77-74 § 6 (part), 1977).

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Chapter 7.40

WILD ANIMALS

Sections:

- 7.40.010 Keeping wild animals.
- 7.40.020 Exceptions.
- 7.40.030 Violations.

7.40.010 Keeping wild animals.

No person shall keep or permit to be kept on his premises any wild animal for any purpose, except as provided in Section 7.40.020. This section shall not be construed to apply to zoological parks, circuses, animal exhibitions, research laboratories, licensed wildlife rehabilitators, or licensed educators. (Ord. 99-39 § 60, 1999; Ord. 76-25 § 4, 1976; Ord. 76-14 § 1 (part), 1976).

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7.40.020 Exceptions.

Any person owning a wild animal prior to the enactment of this chapter shall be permitted to continue ownership of the animal; provided, that he registers the animal with the Animal Control Commission within six (6) weeks after enactment of this chapter. A copy of this registration must be kept by the owner/guardian for as long as the person owns the animal as evidence of possession of the animal prior to the enactment of this chapter. (Ord. 76-14 § 1 (part), 1976).

7.40.030 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within

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seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.

- (b) Persons who violate any provision of this section shall be subject to a fine of five hundred dollars (\$500.00) for each offense. (Ord. 99-39 § 61, 1999; Ord. 81-101 § 3 (part), 1981; Ord. 76-14 § 1 (part), 1976).

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Chapter 7.42

REPTILES

Sections:

- 7.42.010 Registration--Pet shops.
7.42.020 Registration--Others.
7.42.030 Registration--Changes in harboring address.
7.42.040 Lost or impounded reptiles.
7.42.050 Violations.

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7.42.010 Registration--Pet shops.

(a) Any pet shop intending to harbor, sell, trade, or in any way distribute reptiles within the City must register with the City of Bloomington Animal Care and Control Department, in writing, of such intention before any reptiles may be harbored, sold, traded, or distributed.

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(b) Any pet shop harboring, selling, trading or in any way distributing reptiles within the City shall make available for inspection by the City of Bloomington Animal Care and Control Department, an inventory of the number and type of reptiles received, the number and type distributed by sale, trade, death or in any other manner, and the number and type on hand.

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(c) Whenever any pet shop sells, trades or in any way distributes an exotic snake (not native to the United States) within the City, it shall complete a form provided by the City of Bloomington Animal Care and Control Department constituting of the type of exotic snake, the person taking possession of the snake and the address where the snake will be harbored. There will be no fee for said registration. (Ord. 85-23 § 2 (part), 1985).

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7.42.020 Registration--Others.

Any person harboring an exotic snake within the City who acquired the snake from any source other than a registered pet shop, must register the snake with the City of Bloomington Animal Care and Control Department. Such registration shall consist of the name of the owner/guardian and the address where the snake will be harbored. There will be no fee for said registration. (Ord. 85-23 § 2 (part), 1985).

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7.42.030 Registration--Changes in harboring address.

It shall be the responsibility of each owner/guardian of an exotic snake, to inform the City of Bloomington Animal Care and Control Department whenever the address at which a snake is being harbored changes for any reason. These reasons include, but are not limited to: death, loss, sale, transfer, or if the owner/guardian of the snake moves. (Ord. 85-23 § 2 (part), 1985).

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7.42.040 Lost or impounded reptiles.

Lost reptiles shall be impounded and released to the registered owner/guardian or disposed of in accordance with Sections 7.32.030 and 7.32.040, provided however, that any nonpoisonous species native to Indiana shall be presumed wild and released to a natural habitat. (Ord. 85-23 § 2 (part), 1985).

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7.42.050 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) may, at the discretion of the animal owner/guardian, be paid to the City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (b) Persons who violate any provision of this section shall be subject to a fine of fifty dollars (\$50.00) for each offense. (Ord. 99-39 § 62, 1999; Ord. 85-23 § 2 (part), 1986).

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Chapter 7.44

RABIES

Sections:

- 7.44.010 Rabies vaccination required.
- 7.44.020 Animals biting persons.
- 7.44.030 Animals biting animals
- 7.44.050 Euthanization of stray animals.
- 7.44.060 Violations.

7.44.010 Rabies vaccination required.

It is unlawful to own or harbor a dog, cat or ferret over the age of three (3) months without a valid rabies vaccination. (Ord. 98-27 § 9, 1998; Ord. 81-101 § 13, 1981; Ord. 77-51 § 1 (part), 1977).

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7.44.020 Animals biting persons.

(a) If an owned dog, cat or ferret has bitten a person, the animal shall be impounded in the City of Bloomington Animal Shelter, veterinary hospital, or kennel approved by a City animal control officer, at the animal owner/guardian's expense. This impoundment shall be for a period of ten (10) days in order to determine whether or not the animal has rabies. If the animal dies during this ten (10) day period it shall, at the animal owner/guardian's expense, be sent to the proper authorities to determine whether or not it was rabid. Other animals which have bitten a person shall be handled in accordance with the current compendium for animal rabies control, with all expenses being the responsibility of the animal's owner/guardian.

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(b) An owner/guardian reclaiming an impounded bite case animal, having been boarded at the City of Bloomington Animal Shelter, shall pay a board fee as follows:

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- (1) Dog \$10.00 per day
- (2) Cat or ferret \$5.00 per day

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(c) Persons failing to quarantine an owned animal that has bitten a person shall be subject to a fine as specified in 7.44.060. (Ord. 99-39 § 63, 1999).

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7.44.030 Animals biting animals

If an animal has bitten another domestic pet, at the discretion of a City animal control officer, the animal may be impounded in the City of Bloomington Animal Shelter, veterinary hospital, or kennel approved by a City animal control officer, at the animal owner/guardian's expense. The conditions of the impound shall be the same as in section 7.44.020.

7.44.050 Euthanization of stray animals.

If a stray dog, cat or ferret has bitten a person or animal it shall be confined in the City of Bloomington Animal Shelter for five (5) days only. At the end of the five (5) day period, if unclaimed, the animal shall be euthanized, and its brain sent to the Indiana Department of Health Rabies Laboratory for diagnostic tests. (Ord. 98-27 § 13, 1998; Ord. 77-51 § 1 (part), 1977).

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7.44.060 Violations.

Unless otherwise provided for by state statute, persons who violate any provision of this chapter shall be subject to a fine of up to two hundred dollars (\$200.00) for each offense. (Ord. 99-39 § 64, 1999; Ord. 77-51 § 1 (part), 1977).

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Chapter 7.48

ADOPTED ANIMALS

- 7.48.010 Adoption fees
- 7.48.020 Spaying and neutering of adopted animals
- 7.48.030 Violations

7.48.010 Adoption fees.

(a) The fee to adopt any animal shall be as listed in the table found in this section. The adoption fee must be paid prior to the animal being taken to his or her new home.

DOMESTIC ANIMALS

Dogs and cats under 5 years of age	\$75.00
Dogs and cats over 5 years of age	\$55.00
Rabbits and ferrets	\$45.00
Goats, pigs, horses, etc.	\$20.00

BIRDS

Parakeets/Finches	\$10.00
Lovebirds/Cockatiels	\$20.00

REPTILES

\$20.00

SMALL ANIMALS

Guinea Pigs	\$5.00
Mice	\$2.00
Rats	\$2.00
Hamster/Gerbils	\$2.00

(b) In order to help more companion animals find suitable homes, the ~~director of animal care and control~~ Director of the City of Bloomington Animal Care and Control Department has the discretion to raise or lower the adoption fees under the following circumstances:

- (1) Adoptions of animals which have incurred extraordinary expenses while under the shelter's care;
- (2) Adoptions of hard-to-adopt animals or of foster animals by foster parents;
- (3) Adoptions by breed rescue organizations or transfers to humane associations; or
- (4) Adoptions through special promotions or when the kennel is full.

The Director shall inform the Animal Control Commission of any such adjustments at their monthly meeting. (Ord.04-34 &3,2004).

7.48.020 Spaying and neutering of adopted animals. Any dog, cat, rabbit or ferret adopted from the ~~city animal shelter~~ City of Bloomington Animal Shelter shall be spayed or neutered by a veterinarian prior to being taken to his or her new home. The City of Bloomington Animal Care and Control Department shall assume the cost of the spay or neuter operation. If a veterinarian should determine that the dog, cat, rabbit or ferret is physically unable to undergo such an operation at the current time, the dog, cat, rabbit or ferret is to be neutered or spayed as soon as the veterinarian determines it is able. (Ord. 04-34 & 2,2004: Ord. 98-27 § 14, 1998: Ord. 81-101 §§ 1 (part), 15, 1981; Ord. 77-74 § 7 (part), 1977).

7.48.030 Violations.

- (a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) may, at the discretion of the animal owner/guardian, be paid to the ~~authorized agency~~ City of Bloomington Animal Care and Control Department within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.
- (b) Persons who violate any provision of this section shall be subject to a fine of two hundred dollars (\$200.00) for each offense. (Ord. 99 § 64, 1999; Ord. 81-101 § 3 (part), 1981; Ord. 77-74 § 7 (part), 1977).

Chapter 7.52

GENERAL PROVISIONS

Sections:

- 7.52.010 Disposition of funds.
- 7.52.020 Animals census.
- 7.52.030 Conflicting ordinances.
- 7.52.040 Severability clause.
- 7.52.050 Animal shelter.
- 7.52.060 Interference with animal control officer--Penalty.

7.52.010 Disposition of funds. All fees or moneys collected shall be paid to the City of Bloomington Controller, the City of Bloomington Legal Department, the City of Bloomington Animal Care and Control Department or agents designated by the Animal Control Commission. Money so paid shall be transmitted to the City of Bloomington Controller and shall be used in carrying out the provisions of this title. (Ord. 81-101 § 1 (part), 1981; Ord. 76-14 § 1 (part), 1976).

7.52.020 Animals census. Upon enactment of the ordinance codified in this title, the City of Bloomington, at the direction of the Mayor with the approval of the Common Council, may instigate and carry out a City-wide census for the purpose of carrying out the provisions of this title. A census may be held once every two (2) years thereafter at the request of the Mayor and Common Council. The Animal Control Commission shall administer the census. (Ord. 76-14 § 1 (part), 1976).

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7.52.030 Conflicting ordinances.

All other ordinances of the City of Bloomington that are in conflict with this title are repealed to the extent of such conflict. (Ord. 76-14 § 1 (part), 1976).

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7.52.040 Severability clause.

If any part of this title shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this title. (Ord. 76-14 § 1 (part), 1976).

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7.52.050 Animal shelter.

The physical facility known as the City of Bloomington Animal Shelter shall be under the administrative control of the Department of Public Works and shall constitute a division of the department. The senior animal control officer and Animal Control Commission shall retain all powers and duties conferred by this title for the detailed supervision of matters relating to animal control. It is the intent of this title that the Animal Control Commission be an advisory body to formulate, adopt and implement policies, principles and standards for humane treatment and control of all animals in the City. (Ord. 81-101 § 1 (part), 1981; Ord. 77-62 § 11, 1977).

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7.52.060 Interference with animal control officer--Penalty.

Whoever forcibly assaults, resists, opposes, obstructs, prevents, impedes or interferes with any animal control officer while that officer is engaged in the execution of any duties required of animal control officers under this title shall be fined not more than one thousand dollars (\$1,000.00). (Ord. 83-6 § 7, 1983; Ord. 81-101 § 1 (part), 1981; Ord. 81-5 § 3, 1981; Ord. 76-14 § 1 (part), 1976).

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APPENDIX 1

Species		Historic Range	Vertebrate Population Where Endangered or Threatened	Stat us	When Listed	Critical Habitat	Special Rules
Common Name	Scientific Name						
REPTILES							
Alligator, American	Alligator mississippiensis	Southeastern U.S.A.	Wherever found in wild except those areas where listed as threatened as set forth below.	E	1, 11, 51, 60, 113, 134	NA	NA
Do	. . . do	. . . do	U.S.A. (FL and certain areas of GA and SC, as set forth in 7.42(a)(1)).	T	20, 47, 51, 60, 134	NA	17.42(a)
Do	. . . do	. . . do	U.S.A. (LA and T	T(S/A)	11, 47, 51,	NA	17.42(a)

			X).		60, 113, 134		
Do	. . . do	. . . do	In captivi ty ^w herever found.	T(S/ A)	11, 47, 51	NA	17. 42(a)
Alligator, Chinese	Alligator sinensis	China	Entire	E	15	NA	NA
Anole, Culebra Island giant	Anolis roosevelti	U.S.A. (Puerto Rico: Culebra Island)	. . . do	E	25	17. 95(c)	NA
Boa, Jamaican	Epicrates subflavus	Jamaica	. . . do	E	3	NA	NA
Boa, Mona	Epicrates monensis monensis	U.S.A. (Puerto Rico)	. . . do	T	33	17. 95(c)	NA
Boa, Puerto Rico	Epicrates inornatus	. . . do	. . . do	E	2	NA	NA
Boa, Round Island [no common name]	Casarea dussumieri	Indian Ocean: Mauritius	. . . do	E	88	NA	NA
Boa, Round Island [no common name]	Bolyeria multocarinata	Indian Ocean: Mauritius	. . . do	E	88	NA	NA
Boa, Virgin Islands tree	Epicrates monensis granti	U.S. and British Virgin Islands	. . . do	E	2, 86	NA	NA
Caiman, Apaporis River	Caiman crocodilus apaporiensis	Colombia	. . . do	E	15	NA	NA
Caiman, black	Melanosuchus niger	Amazon basin	. . . do	E	15	NA	NA
Caiman, broad- snouted	Caiman latirostris	Brazil, Argentina, Paraguay, Uruguay	. . . do	E	15	NA	NA
Caiman, Yacare	Caiman crocodilus	Bolivia, Argentina,	. . . do	E	3	NA	NA

	yacare	Peru, Brazil					
Chuckwalla, San Esteban Island	Sauromalus varius	Mexico	. . . do	E	88	NA	NA
Crocodile, African dwarf	Osteolaemus tetraspis tetraspis	West Africa	. . . do	E	15	NA	NA
Crocodile, African slender- snouted	Crocodylus cataphractus	Western and central Africa	. . . do	E	5	NA	NA
Crocodile, American	Crocodylus acutus	U.S.A. (FL), Mexico, South America, Central America, Caribbean	. . . do	E	10, 87	17. 95(c)	NA
Crocodile, Ceylon mugger	Crocodylus palustris kimbula	Sri Lanka	. . . do	E	15	NA	NA

APPENDIX 1 (Continued)

Species		Historic Range	Vertebrate Population Where Endangered or Threatened	Sta tus	When Liste d
Common Name	Scientific Name				
Crocodile, Congo dwarf	Osteolaemus tetraspis osborni	Congo River drainage	. . . do	E	1
Crocodile, Cuban	Crocodylus rhombifer	Cuba	. . . do	E	
Crocodile, Morelet's	Crocodylus moreletii	Mexico, Belize, Guatemala	. . . do	E	
Crocodile, mugger	Crocodylus palustris palustris	India, Pakistan, Iran, Bangladesh	. . . do	E	1
Crocodile, Nile	Crocodylus niloticus	Africa	. . . do	E	
Crocodile, Orinoco	Crocodylus	South America:	. . . do	E	

	intermedius	Orinoco River Basin			
Crocodile, Philippine	Crocodylus novaeguineae mindorensis	Philippine Islands	. . . do	E	1
Crocodile, saltwater (=estuarine)	Crocodylus porosus	Southeast Asia, Australia, Papua-New Guinea, Pacific Islands.	Entire, except Papua-New Guinea.	E	8
Crocodile, Siamese	Crocodylus siamensis	Southeast Asia, Malay Peninsula	Entire	E	1
Gavial (=gharial)	Gavialis gangeticus	Pakistan, Burma, Bangladesh, India	. . . do	E	3, 1
Iguana, Cuban ground	Cyclura nubila nubila	Cuba	Entire (excluding population introduced in Puerto Rico).	T	12
Gecko, day	Phelsuma edwardnewtoni	Indian Ocean: Mauritius	. . . do	E	
Gecko, Monito	Sphaerodactylus micropithecus	U.S.A. (Puerto Rico)	. . . do	E	12
Gecko, Round Island day	Phelsuma guentheri	Indian Ocean: Mauritius	. . . do	E	
Gecko, Serpent Island	Cyrtodactylus serpensinsula	. . . do	. . . do	T	12
Iguana, Acklins ground	Cyclura rileyi nuchalis	West Indies: Bahamas	. . . do	T	12
Iguana, Allen's Cay	Cyclura cyclura inornata	. . . do	. . . do	T	12
Iguana, Andros Island ground	Cyclura cyclura cyclura	. . . do	. . . do	T	12
Iguana, Anegada ground	Cyclura pinguis	West Indies: British Virgin Islands (Anegada Island).	. . . do	E	
Iguana, Barrington land	Conolophus pallidus	Ecuador (Galapagos Island)	. . . do	E	

Iguana, Cayman Brac ground	<i>Cyclura nubila caymanensis</i>	West Indies: Cayman Islands	. . . do	T	12
Iguana, Exuma Island	<i>Cyclura cychlura figginsi</i>	West Indies: Bahamas	Entire	T	12
Iguana, Fiji banded	<i>Brachylophus fasciatus</i>	Pacific: Fiji, Tonga	. . . do	E	8
Iguana, Fiji crested	<i>Brachylophus vitiensis</i>	Pacific: Fiji	. . . do	E	8
Iguana, Grand Cayman ground	<i>Cyclura nubila lewisi</i>	West Indies: Cayman Islands	. . . do	E	12
Iguana, Jamaican	<i>Cyclura collei</i>	West Indies: Jamaica	. . . do	E	12

APPENDIX 1 (Continued)

Species		Historic Range	Vertebrate Population Where Endangered or Threatened	Status	When Listed
Common Name	Scientific Name				
Iguana, Mayaguana	<i>Cyclura carinata bartschi</i>	West Indies: Bahamas	. . . do	T	12
Iguana, Mona ground	<i>Cyclura stejnegeri</i>	U.S.A. (Puerto Rico: Mona Island)	. . . do	T	3
Iguana, Turks and Caicos	<i>Cyclura carinata carinata</i>	West Indies: Turks and Caicos Islands	. . . do	T	12
Iguana, Watling Island ground	<i>Cyclura rileyi rileyi</i>	West Indies: Bahamas	. . . do	E	12
Iguana, White Cay ground	<i>Cyclura rileyi cristata</i>	. . . do	. . . do	T	12
Lizard, blunt-nosed leopard	<i>Gambelia (=Crotaphytus) silus</i>	U.S.A. (CA)	. . . do	E	
Lizard, Coachella Valley fringe-toed	<i>Uma inornata</i>	. . . do	. . . do	T	10

Lizard, Hierro giant	Gallotia simonyi simonyi	Spain (Canary Islands)	. . . do	E	14
Lizard, Ibiza wall	Podarcis pityuensis	Spain (Balearic Islands)	. . . do	T	14
Lizard, Island night	Xantusia (=Klauberina) riversiana	U.S.A. (CA)	. . . do	T	2
Lizard, St. Croix ground	Ameiva polops	U.S.A. (Virgin Islands: Green Cay, Protestant Cay).	. . . do	E	2
Monitor, Bengal	Varanus bengalensis	Iran, Iraq, India, Sri Lanka, Malaysia, Afghanistan, Burma, Vietnam, Thailand.	. . . do	E	1
Monitor, desert	Varanus griseus	North Africa to Neareast, Capian Sea through U.S.S.R. to Pakistan, North- west India.	. . . do	E	1
Monitor, Komodo Island	Varanus komodoensis	Indonesia (Komodo, Rintja, Padar, and western Flores Island.	. . . do	E	1
Monitor, yellow	Varanus flavescens	West Pakistan through India to Bangladesh.	. . . do	E	1
Python, Indian	Python molurus molurus	Sri Lanka and India	. . . do	E	1
Rattlesnake, Aruba Island	Crotalus unicolor	Aruba Island (Netherland Antilles)	. . . do	T	12
Rattlesnake, New Mexican ridge-nosed	Crotalus willardi obscurus	U.S.A. (NM), Mexico	. . . do	T	4
Skink, Round Island	Leiopisma telfairi	Indian Ocean: Mauritius	. . . do	T	12
Snake, Atlantic salt marsh	Nerodia fasciata taeniata	U.S.A. (Florida)	. . . do	T	3
Snake, eastern indigo	Drymarchon corals couperi	U.S.A. (AL, FL, GA, MS, SC)	. . . do	T	3

Snake, San Francisco garter	<i>Thamnophis sirtalis tetrataenia</i>	U.S.A. (California)	. . . do	E	
Tartaruga	<i>Podocnemis expansa</i>	South America: Orinoco and Amazon River basins.	. . . do	E	
Terrapin, river (=Tuntong)	<i>Batagur baska</i>	Malaysia, Bangladesh, Burma, India, Indonesia.	. . . do	E	
Tomistoma	<i>Tomistoma schlegelii</i>	Malaysia, Indonesia	. . . do	E	1

APPENDIX 1 (Continued)

Species		Historic Range	Vertebrate Population Where Endangered or Threatened	Status	When Listed
Common Name	Scientific Name				
Tortoise, angulated	<i>Geochelone yniphora</i>	Malagasy Republic (=Madagascar)	. . . do	E	1
Tortoise, Bolson	<i>Gopherus flavomarginatus</i>	Mexico	. . . do	E	4
Tortoise, desert	<i>Scaptochelys (=Gopherus) agassizii</i>	U.S.A. (UT, AZ, CA, NV); Mexico	Beaver Dam Slope, Utah.	T	10
Tortoise, Galapagos	<i>Geochelone elephantopus</i>	Ecuador (Galapagos Islands)	Entire	E	
Tortoise, radiated	<i>Geochelone (=Testudo) radiata</i>	Malagasy Republic (=Madagascar)	. . . do	E	
Tracaja	<i>Podocnemis unifilis</i>	South America: Orinoco and Amazon River basins.	. . . do	E	
Tuatara	<i>Sphenodon punctatus</i>	New Zealand	. . . do	E	
Turtle, aquatic box	<i>Terrapene coahuila</i>	Mexico	. . . do	E	
Turtle, black	<i>Trionyx nigricans</i>	Bangladesh	. . . do	E	1

softshell					
Turtle, Burmese peacock	Morenia ocellata	Burma	. . . do	E	1
Turtle, Central American river	Dermatemys mawil	Mexico, Belize, Guatemala	. . . do	E	12
Turtle, Cuatro Cienegas softshell	Trionyx ater	Mexico	. . . do	E	1
Turtle, geometric	Psammobates geometricus (=Geoche-lone geometrica).	South Africa	. . . do	E	1
Turtle, green sea	Chelonia mydas	Circumglobal in tropical and temperate seas and oceans.	Wherever found except where listed as endangered below.	T	2, 4
Turtle, green sea	Chelonia mydas	. . . do	Breeding colony populations in FL and on Pacific coast of Mexico.	E	2, 4
Turtle, hawksbill sea (=carey)	Eretmochelys imbricata	Tropical seas	Entire	E	
Turtle, Indian sawback	Kachuga tecta tecta	India	. . . do	E	1

APPENDIX 1 (Continued)

Species	Historic Range	Vertebrate Population Where Endangered or	Stat us	When Listed
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			Threatened		
Common Name	Scientific Name				
Turtle, Indian softshell	Trionyx gangeticus	Pakistan, India	. . . do	E	1
Turtle, Kemp's (=Atlantic) Ridley sea	Lepidochelys kempii	Tropical and temperate seas in Atlantic Basin.	. . . do	E	
Turtle, leatherback sea	Dermochelys coriacea	Tropical, temperate, and subpolar seas	. . . do	E	
Turtle, loggerhead sea	Caretta caretta	Circumglobal in tropical and temperate seas and oceans.	. . . do	T	4
Turtle, Olive (Pacific) Ridley sea	Lepidochelys olivacea	Tropical and temperate seas in Pacific Basin.	Whenever found except where listed as endangered below.	T	4
Turtle, Olive (Pacific) Ridley sea	Lepidochelys olivacea	. . . do	Breeding colony populations on Pacific coast of Mexico.	E	4
Turtle, peacock softshell	Trionyx hurum	India, Bangladesh	Entire	E	1
Turtle, Plymouth red-bellied	Pseudemys (=Chrysemys) rubriventris bangsi.	U.S.A. (Massachusetts)	. . . do	E	9
Turtle, short-necked or western swamp	Pseudemydura umbrina	Australia	. . . do	E	

Turtle, spotted pond	Geoclemys (=Damonina) hamiltonii	North India, Pakistan	. . . do	E	1
Turtle, three-keeled Asian	Melanochelys (=Geoemyda, Nicoria) tricarinata.	Central India to Bangladesh and Burma.	. . . do	E	1
Viper, Lar Valley	Vipera latifii	Iran	. . . do	E	12

Chapter 7.12

LICENSING

Sections:

- 7.12.010 Licensing required- Exceptions.
- 7.12.020 Obtaining a license.
- 7.12.030 Tags.
- 7.12.040 Fees.
- 7.12.050 License period.
- 7.12.060 Use of a license for another animal.
- 7.12.070 Violations.

7.12.010 Licensing required-Exceptions.

Any person owning, harboring, or having custody of a dog or cat over six months of age within the city must obtain a license for it under this chapter unless that person owns the animal under authority of either a kennel or commercial animal establishment permit. No license shall be required for service dogs. (Ord. 99-39 § 15, 1999; Ord. 76-14 § 1 (part), 1976).

7.12.020 Obtaining a license.

Applications for a license shall be made to the senior animal control officer or the city controller or any authority deemed appropriate by the commission. The application, one per animal, shall include the name and address of the applicant, a description of the animal, a current rabies certificate issued by a veterinarian, and information whether the applicant has been convicted of cruelty to animals. If the applicant withholds or falsifies any information of the application, no license shall be issued, and any licenses issued upon false or withheld information shall be null and void. No person who has been convicted of cruelty to animals shall be issued a license without review by the animal control commission. Application for a license must be made when the animal reaches the age of six months. When a person obtains an animal older than six months, a license must be applied for within fifteen days. (Ord. 81-101 §§ 1 (part), 2 (part), 5, 1981; Ord. 76-14 § 1 (part), 1976).

7.12.030 Tags.

Upon acceptance of the license application and fee, there shall be issued to the applicant a durable tag stamped with an identification number and month of expiration. Animals must wear such tags at all times when off the premises of the owner, or on the real property of the owner but not under restraint. The licensing agent shall maintain a record of the identifying number of all tags issued. (Ord. 76-22 § 1, 1976; Ord. 76-14 § 1 (part), 1976).

7.12.040 Fees.

(a) A license shall be issued after payment of the applicable fees and the receipt of all application materials. Per year fees shall be as follows:

(1) For each unneutered male or unspayed female dog or cat, seven dollars;

(2) For each neutered male and spayed female dog or cat, two dollars.

(b) A duplicate license may be obtained for a fee of one dollar upon the owners certifying that the original tag is lost. If an animal has been spayed or neutered after the license fee has been paid, the difference between the spayed and unspayed or neutered and unneutered rate for that year shall be refunded upon presentation of a veterinarian's written certification of the operation. The owner of any animal deemed by a veterinarian to be unfit to undergo a spaying or neutering operation shall be, upon presentation of written certification to that effect by a veterinarian, charged the fee for spayed or neutered animals. (Ord. 94-13 § 1, 1994; Ord. 81-101 § 6, 1981; Ord. 76-25 § 1, 1976; Ord. 76-22 § 2, 1976; Ord. 76-14 § 1 (part), 1976).

7.12.050 License period.

Licenses for dogs and cats shall be for one year from the last day of the month of issuance. (Ord. 99-39 § 16, 1999; Ord. 76-22 § 3, 1976; Ord. 76-14 § 1 (part), 1976).

7.12.060 Use of a license for another animal.

No person shall use a license for any animal other than the animal for which it was issued. No license shall be transferable to a new owner. (Ord. 99-39 § 17, 1999; Ord. 76-14 § 1 (part), 1976).

7.12.070 Violations.

(a) Any animal control officer may issue to any person in violation of this chapter a notice of ordinance violation. The penalty established in subsection (b) may, at the discretion of the animal owner, be paid to the authorized agency within seventy-two hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction.

(b) Persons who violate any provision of this chapter shall be subject to a fine of twenty dollars for the first offense, with the fine for each subsequent offense of this chapter increasing by an increment of twenty dollars. In the event the person has no additional violations of this chapter for a period of twelve consecutive months, the fine for any violation of this chapter after that period shall be twenty dollars for the first offense, with the fine for each subsequent

offense increasing by an increment of twenty dollars. (Ord. 99-39 § 18, 1999; Ord. 81-101 § 3 (part), 1981; Ord. 76-14 § 1 (part), 1976).

Page 25: [3] Deleted	City of Bloomington	11/21/2005 1:42:00 PM
(1)	Dog	\$10.00 per day
(2)	Cat or ferret	5.00 per day
(c)		

11-02-05 Animal Control Commission Meeting
Proposed Title 7 Changes
Public Comment and Discussion Items

Attendance: 4 Animal Control Commissioners (Shirley Daviess, Sarah Delone, Teresa Fanyo, Valerie Pena), 4 DPW staff (Julio Alonso, Toni McClure, Laurie Ringquist, Mike Zawada), 14 in crowd (Mike Cagle, Bob Foyut, Jennifer Maher, Vicky Myers, Nancy Vasquez, Nat McKamey, Helene Jones, Mary Alice Cox, Jim Koch, Sarah Hayes, Maria Heslin, Carole Heslin, and 2 others), 1 camera person

Valerie—Background and introductions
Julio—clarification that this is still a draft

The following is a summary of comments and questions from the public under the headings of the topics they involve. Where appropriate the section is followed by a staff note explaining the resolution of the issue(s) in question.

PET LIMITS

Question regarding meaning of noncommercial kennel permit and discussion about the limit of 10 animals otherwise with 4 dog-6 cat combination

Does this discourage fostering? Foster dogs would be exempt, not intended for people hosting fosters or temporarily pet-sitting.

You could have only one dog, which is a nuisance or 5 that are not a nuisance—why target those with more animals? The amount of animals shouldn't be the issue.

Why is it good to increase the limit?—people could have an infinite number as long as they're willing to pay—is that wise?

Should there be an absolute upper limit too?

It's nobody else's business how many you have as long as you're taking care of them.

Maybe have a limit of 10 without specifications on cats and dogs

Mike Cagle: It's a step backward to make it easier for people to have more animals. In addition to your "special fee for more than 4 dogs + 6 cats" idea—there should be an upper limit—People shouldn't be allowed to own an infinite # of dogs. Why should someone have 20 dogs—when there's a limit to the # of unrelated humans in a household!

Staff Note: This discussion mirrors the input received from animal welfare groups. Some believe that the city should not impose limits on the number of domestic animals allowed or require permits for people above those limits. Staff agrees that the public should be afforded maximum ability to provide companionship to as many animals as they can care

for without becoming a nuisance to their neighbors and that the existing limit of 4 is too strict in many situations. As such, our proposal increases the number of animals allowed before a non-commercial kennel permit is required from 4 to 10, with specific restrictions on the type of animal (no more than 4 dogs, no more than 6 cats). However, staff continues to believe that a limit must be maintained as a tool to address nuisances and situations where animals are not properly cared for. Staff also believes that larger numbers of dogs are more likely to create nuisance problems than larger numbers of cats, hence the specific dog and cat restrictions. As such, no changes were made to the proposals as a result of this discussion.

CRUELTY AND ABUSE

7.36.025—Would prosecution still be an option or would that be double-jeopardy?

A: We'd pursue prosecution first, and if nothing else, still be able to institute the fine.

TETHERING

How would tethering violations be discovered

A: By report and affidavit process.

Maybe permits and fines should only apply to those who violate tethering or other laws

BODY-GRIPPING DEVICES

7.36.080—Please include moles for exemptions regarding ban of body-gripping devices.

Staff Note: This entire section has been removed from the ordinance proposals after Legal determination that the issue is under state jurisdiction.

FERAL CAT COLONY PERMITS

Teresa: Should not put such restrictions on the care of feral cats

Question of what a feral cat is and how there can be harboring if they are undomesticated

Question on permit fee: Why make someone who cares for and S/N ferals pay for doing a good deed?

Teresa: Difficult to divide up permit fee among collective neighbors – some colonies are managed as a collaborative neighborhood effort

They're doing a good thing; permit req. might discourage S/N and caretaking

People should keep in mind we're discussing perfect pet owners and many people are not good owners; animal control must have ability to do something about them

Could S/N costs go toward permit fee?

Colonies should be registered but not charged a fee

We should look into best practices for feral cat colonies and implement them

Teresa: Quotation from LA AC&C Dir.: “[it’s not the city’s business]”

Indy has a private organization that handles feral cats through an agreement with Indy animal control (“Indy Feral”)

Laurie: How would we know which complaints were feral related?

Julio: Staff is open to considering agreement with Feral Cat Friends (local organization), however, that is not possible yet – too many unresolved questions. Also, for many, concept of Trap/Neuter/Return and feral cat colonies is new and radical. Many still view cats as pests and just want them removed. It is great progress and significant just to get the concept introduced and codified. Bear in mind that code changes are an incremental, continuous, and ongoing process.

Staff Note: Again, this discussion mirrors prior input from animal welfare groups. Some believe feral cat colonies should not be regulated and that nuisance complaints should be resolved among neighbors with assistance from a private organization. Staff believes that Trap Neuter Return is the preferred method of addressing feral cat overpopulation and that trapping and killing does not solve the problem because new cats move into vacated territory and continue reproducing. However, staff believes that at least until such time as we have more experience with this method and definitive results to report, feral cat colonies should register with the city in the same way any individual with more than 6 cats would. Upon consideration of this public input, however, staff agrees that because colony caretakers are providing a positive service, they should not be required to pay a permit fee. Colonies are still required to be registered, but the proposed \$25 permit fee has been removed.

NUISANCE LANGUAGE

Item (6) added to definition of “public nuisance” : “otherwise interferes with the free use and comfortable enjoyment of life or property.” Some at AWAC and ACC objected to this language, why not remove?

Staff Note: This language was initially proposed by the county attorney for the county ordinances and was added to city ordinances for consistency. The City Legal department has stated that the language should remain as a means of addressing problems that may not be specifically outlined in the definition of public nuisance. Staff raised this issue again following this public input and Legal continues to believe it should remain in the ordinance. Consequently, no changes were made as a result of this discussion.

VICIOUS ANIMALS

Addition of steps to this section seems to put roadblocks into the process

A: It’s not a major stoppage and necessary to ensure proper procedure

Julio: in IN, dogs are considered property, so we need greater detail to justify City action and provide due process to owners

36-month threshold of seems arbitrary; and couldn't it just be muzzled for 3 years such that it couldn't harm anyone, get approved for "potentially dangerous" status, get the muzzle removed, and the next day bite somebody?

Mike Cagle: I don't like making it more complicated to declare a dog "vicious [sic]." I don't like exceptions for biting trespassers or "protecting" people. A "trespasser" might be innocently lost or a neighbor walking over for a visit. And owners can always argue a dog was trying to "protect" someone—This offers too broad a defense for an owner of a dog that attacks. These excuses shouldn't be available. Who knows what a dog is thinking anyway—It['s motivation is irrelevant.

Staff note: Current code is vague and subjective, limiting animal control's ability to address issues of potentially dangerous animals. New proposals establish more clear definitions that tie types of behavior to a behavior classification ("potentially dangerous" or "vicious") and establish clear requirements of owners if their animal is classified as such. Also establishes due process of appeal to Animal Control Commission, but animal control retains the right to impound animals when necessary while ACC considers the issue. Legal agreed with the statement from the public above that the language about having the "potentially dangerous/vicious" designation removed after 36 months and the language specifying reasons that a dog could not be declared vicious or dangerous was too absolute and it has been removed. It is being replaced with more general language that establishes the owner's right to present evidence to the ACC of the circumstances and to request reconsideration of the designation.

ANIMAL EXHIBITIONS

Ban on circuses proposed?

A: Not currently part of these proposals

Can we ban them?

Valerie: Many would come out in favor of allowing them

Call council members to voice your opinion

Staff Note: These questions also mirror input received from animal welfare groups. Many feel that performing animal exhibitions like circuses should be banned as some other communities have done. Others feel that more public education would be required before there would be general public support for such a step. Staff has not proposed such a ban, but has encouraged continued discussion on how to best ensure that such exhibitions provide humane treatment for the animals under their care. Our proposals do include an increase in the fine for violations of cruelty prohibitions and use of performance-inducing devices as well as the permit fee for circuses/transient animal exhibitions.

FERAL CAT COLONIES/TRAP-NEUTER-RETURN PROGRAMS

The following input was provided electronically by Theresa Fanyo of Feral Cat Friends, Inc. following some discussion at the meeting:

Ordinance Proposal for Feral Cats

Definitions

Colony means a group of free-roaming cats.

Colony Caretaker means a person who provides food, water and shelter for free-roaming cats in a managed colony.

Eartipped cat means any cat which has the tip of the left ear removed shall mean this cat belongs to a managed colony and shall not be accepted by Animal Care and Control.

Free-roaming cat means any homeless, stray, feral or untamed cat.

Managed colony means a colony of free-roaming cats that is maintained by a colony caretaker using trap, neuter, return methodology.

Trap-Neuter-Return means a full management plan in which free-roaming cats already living outdoors are humanely trapped, then evaluated, vaccinated and sterilized and eartipped by veterinarians. Kittens under 10 weeks old are adopted into good homes if they become socialized. Healthy adult cats too wild to be adopted are returned to their familiar habitat under the lifelong care of volunteers. TNR is the accepted method of free-roaming cat control by Animal Care and Control.

Colony Caretaker Responsibilities

- (a) Colony caretakers shall abide by standard guidelines devised by its designee regarding the provision of food, water, shelter and veterinary care for cats within the managed colony.
- (b) Colony caretakers shall have a licensed veterinarian evaluate the health of all trapped free-roaming cats. Seriously ill cats with no reasonable prognosis for humane rehabilitation for survival outdoors will be humanely euthanized.
- (c) Colony caretakers or its designee must maintain at all times, a record of antirabies vaccination for all free-roaming cats within a colony.

Standards for Cat Colonies

(a) Free roaming cat complaints will be referred to FCF. Issues not able to be resolved by FCF will be referred to animal control. These issues shall be resolved in a reasonable time showing good faith effort to comply.

(b) Comply with all of the provisions of Chapter 7.36 Animal Care, which provides standards for the general care of animals. (Need to remove “feral cat” from Section 7.36.050 (b) “shall be provided with a structurally sound, moisture proof and windproof shelter...”)

Delete the Following per our Discussion at AWAC & ACC Meetings:

“Harboring”

“Non-commercial kennel permits” and corresponding fees and inspections.

“Non-municipal animal shelter/sanctuary permits” and corresponding fees and inspections.

“Feral cat colony permits” and corresponding fees and inspections.

Replace “Standards for feral cat colonies with the above “Standards for Cat Colonies”

Staff Note: As previously indicated, the permit fee for feral cat colonies has been removed from the proposal; the permit fee for non-municipal animal shelter/sanctuary has also been eliminated.

Staff believes that the above proposal provides a good outline to continue discussions about feral cat management issues with Feral Cat Friends, Inc. We do have some specific concerns regarding some of the proposed definitions and practices, and in a larger perspective, we believe the concept of TNR and the management of feral cat colonies must be introduced incrementally after additional public education and some evidence of demonstrated success on a local level. However, we remain interested in and committed to continuing this dialogue.

Feral Cat Friends proposes the shifting of some responsibilities that have traditionally been considered the duty of municipal government to their private organization. This includes the initial resolution of cat nuisance complaints, the inspection of colonies used to determine that adequate care is provided, and the keeping of records. Staff believes there is merit to considering how such a proposal might be implemented.

However, consideration of such a proposal requires additional documentation of the organization’s structure, membership, procedures, financial security and ability to sustain itself and its programs over time. If the City were to consider such a proposal, a formal contract or memorandum would be required that would involve significant legal review and negotiation by both the City and the organization. Additional public education and input would also be necessary. It is not feasible to complete such a process in such a short time; we believe it would not be responsible to delete permit and inspection clauses in the interim; and the Legal department advises that it necessary to keep the term “harboring” in the ordinance. Hence the only changes made to the ordinance as a result of this proposal are the elimination of permit fees outlined at the start of this section.

Material for Both

**Ord 05-34 To Amend Title 10 of the Bloomington
Municipal Code Entitled “Wastewater”
(Wastewater Rate Adjustment)**

and

**Ord 05-35 An Ordinance to Authorize Issuance of
Sewage Works Revenue Bonds
(For Wastewater and Storm Water Projects)**

Memo from Vickie Renfrow, Assistant City Attorney



**CITY OF BLOOMINGTON
LEGAL DEPARTMENT
MEMORANDUM**

TO: City of Bloomington Common Council Members
FROM: Vickie Renfrow, Assistant City Attorney
RE: Sewage Works Rate and Bond Ordinances and Cost Estimates for Projects
DATE: November 29, 2005

The following memorandum sets out the issues to be considered in determining the necessity for rate adjustments and obtaining additional bond authorization for the Sewage Works Utility (including wastewater and stormwater).

Background

The history of CBU sewage works rate adjustments since 1994 as they impact the typical residential customer consuming 5000 gallons per month is summarized in the following table:

WASTEWATER ONLY	Ord 94-41	Ord 97-01	Ord 98-29	Ord 99-31	Ord 00-34	Ord 03-24	Total % increase over 9 years	Average annual % increase over 9 years
Residential (rate/1000)	2.46	2.76	3.01	3.28	3.54	3.68		
Charge for 5000 gallons	12.30	13.80	15.05	16.40	17.70	18.40		
Percentage increase over previous rate		12.20%	9.06%	8.97%	7.93%	3.95%		
Per meter	2.53	2.83	3.08	3.36	3.63	3.77		
Percentage increase over previous rate		11.86%	8.83%	9.09%	8.04%	3.86%		
Total for usage and service charge	14.83	16.63	18.13	19.76	21.33	22.17	49.5%	5.50%
Percentage increase over previous total rate		12.14%	9.02%	8.99%	7.95%	3.94%		
STORM WATER	Ord 98-29	Ord 99-04	Ord 01-15	Ord 03-24	Total % increase over 5 years	Average annual increase over 5 years		
Single Family Residential	2.35	2.35	2.35	2.70	14.89%	2.98%		
Percentage increase over previous rate		0.00%	0.00%	14.89%				
WASTEWATER/STORMWATER COMBINED								
Additional for stormwater	2.35	2.35	2.35	2.35	2.35	2.70		
Total wastewater utility charge	17.18	18.98	20.48	22.11	23.68	24.87	44.8%	4.97%
Percentage increase over previous rate		10.48%	7.90%	7.96%	7.10%	5.03%		

Since the time of the most recent adjustments to rates and charges, the Sewage Works Utility has experienced increased costs in operation and maintenance, increased demand for system improvements, and the need to complete and move forward with necessary capital projects, particularly in light of the obligations which arise under the Agreed Order with IDEM. It is my understanding that CBU staff have pared the list of capital projects which must be completed to the absolute minimum necessary to achieve compliance with regulatory demands and to satisfy projected demand by our customer base. Adjustment of the rates and charges will be required in order to address these needs and allow the Sewage Works to operate in a fiscally responsible manner and assure that our customers' existing and future needs are met. The figures presented below regarding rate increases are based on the test year ending December 31, 2004.

Sewage Works Rates and Bonding Authority

The factors giving rise to a need for Sewage Works rate adjustments and additional bond authorization are described below. Additional information about some of the projects from the Utilities Engineering Department is also included. It is important that we go forward with these projects according to the time schedule presented because they are all related in one way or another either to the Agreed Order that the City has signed with IDEM or coming into compliance with additional regulatory requirements. They all relate to the requirement that we (1) have a collection system that is sufficient in size and condition to transport wastewater to the plants, even during severe wet weather events, (2) have infrastructure in place that can divert stormwater from the wastewater collection system to reduce sanitary sewer overflow risk, and (3) have wastewater treatment plants that function in an efficient and effective manner in treating the collected wastewater and at maximum possible capacity. With the signing of our Agreed Order we are required to meet the ongoing requirements of our Compliance Plan within the timeline indicated to satisfy these requirements.

Wastewater Utility

The factors to be considered in determining the amount of a wastewater rate adjustment and additional bond authorization¹ to seek include:

1. **“Catch-up” and Ongoing Expenses.** A portion of the recommended wastewater rate increase, namely 5.18%, is due to the fact that current revenue is not sufficient to keep up with ongoing operation and maintenance and other costs. The impact on the average residential customer consuming 5000 gallons per month due to this 5.18% rate increase would be an increase in the sewer bill of \$1.15.
2. **Wet Weather Program** This project is also required under the terms of the Agreed Order. It involves rehabilitation or replacement of sanitary sewers in the downtown area which

¹ Actually, we currently have almost \$19,000,000 in bond authorization remaining pursuant to bond ordinance 00-35. However, because there have been changes in the projects to be completed, it would be best to take a new bond ordinance to the Council which references the projects currently planned and repeals the authorization still remaining under Ord. 00-35.

experience significant amounts of inflow and infiltration during wet weather events. The cost of construction for this project for 2006 is \$1,500,000, with another \$1,500,000 required in 2007, and the rate increase associated with this cost is 1.86%. The impact of financing this project with long term debt on the average residential customer consuming 5000 gallons per month due to this additional 1.86% rate increase would be an increase in the sewer bill of \$0.41.

3. New Administration Building. The USB decision to rebuild at the current site will cost the Sewage Works Utility \$1,200,000. The rate increase for the sewage works attributable to covering the \$1,200,000 cost of the new building would be 0.81%. The impact on the average residential customer consuming 5000 gallons per month due to this additional 0.81% rate increase would be an increase in the sewer bill of \$0.18.

4. Blucher Poole Improvements Phase II. On December 31, 2004, the Sewage Works Utility closed on \$5,800,000 in SRF financing primarily to go forward with Phase I of the Blucher Poole Wastewater Treatment Plant Improvements project, as well as some painting work at the Dillman Road Wastewater Treatment Plant. The cost of these two projects including a contingency fund totals \$2,064,265 and this will be paid from the \$5,800,000 in SRF funds already obtained. This will leave \$3,735,735 in SRF funds to apply toward the cost of Blucher Poole Phase II. The estimated cost of Phase II of the Blucher Poole improvements is \$7,131,250 which means that an additional \$3,400,000 in SRF funding will be necessary to complete all the facets of the Blucher Poole Phase II project. The rate increase for the sewage works attributable to covering the \$3,400,000 cost of the Blucher Poole work for which funds have not already been obtained would be 2.31%. The project is necessary because in the Agreed Order we are committing ourselves to the goal of having wastewater treatment plants that function in an efficient and effective manner in treating wastewater and at maximum possible capacity. The impact on the average residential customer consuming 5000 gallons per month due to this additional 2.31% rate increase would be an increase in the sewer bill of \$0.51.

The Utilities Engineering Department has provided the following information regarding this project:

BLUCHER POOLE WWTP IMPROVEMENTS - PHASE 2

Project Includes:

Grit removal facility
Influent lift station pump modifications
Influent lift station fine screen
Plant automation and SCADA improvements
Septage receiving station
Aeration basins diffused air system
Electrical Improvements
Other miscellaneous improvements

Reasons for Project:

Blucher Poole plant was placed in operation in 1970. Most of the existing equipment is original and is at the end of its useful life. The existing influent lift pumps operate at constant speed and are manually controlled to best match incoming flow. This type of pump operation is not conducive to proper process train performance and causes large fluctuations in incoming waste levels. Sanitary Sewer Overflow (SSO) events occur as a result of this type of pump operation. The existing mechanically cleaned coarse bar screen is more than 16 years old and parts are becoming unavailable. The machine jams often which requires manual cleaning of gravel and debris from the influent channel. The existing diffusers for the aeration basins are original and are showing signs of failure. The diffusers are discharging coarse bubbles in several locations which indicate failure of the flexible membrane elements. Currently, Blucher Poole plant does not have a grit removal facility. The addition of grit removal will significantly reduce wear on process equipment and reduce manual grit removal costs. Private hauler septage is currently received at the plant without means to control the flow to the influent lift station. In addition, there is no means to determine the quantity of septage delivered and to hold the septage to allow for testing. The existing Programmable Logical Controllers (PLC's) are obsolete and do not conform to CBU automation and monitoring standards. Parts are no longer available for this equipment. Several Plant processes are not controlled and/or monitored by a Supervisory Control and Data Acquisition (SCADA) system. The existing plant power service is an ungrounded delta system which is obsolete and poses a concern from a safety and equipment reliability standpoint. Lightning strikes occur frequently at the plant and existing major electrical gear is unprotected from transient voltage surges.

5. Dillman Road Headworks Improvements. This project is a priority because it helps us achieve the goal of maximizing capacity, efficiency and effectiveness at the Dillman Road Plant. It is not enough to improve the collection system since overflows will still occur if we do not have the capacity to treat the wastewater that reaches the plant. This project will significantly increase plant pumping capacity which is currently 30 mgd when we operate within "Ten States Standards" which requires that a pump be available for backup use at all times. The hydraulic capacity of the Plant is 47 mgd, and with completion of the proposed improvements we will be able to pump at that level while staying within the Ten States Standards. This will enhance our ability to deal with wet weather events while complying with the Ten State Standards. The cost of these improvements is \$3,350,000, and the financing of this project would require a 2.27% increase in the wastewater rate. The impact on the average residential customer consuming 5000 gallons per month due to this additional 2.27% rate increase would be an increase in the sewer bill of \$0.51.

The Utilities Engineering Department has provided the following information regarding this project:

DILLMAN ROAD PLANT HEADWORKS IMPROVEMENTS

Project includes:

The proposed plan will increase the raw sewage pumping capacity and improve the screening process. Major equipment and modifications for the improvements include: Installation of four (4) new dry pit, submersible, raw sewage pumps with 45 mgd capacity, installation of new 4160-volt to 460-v transformer and variable frequency drive units for the raw sewage pumps,

replacement of 4160-volt switch gear in the pump building, installation of new raw sewage pump motor control centers, replacement of the 20 year old screen with a new 0.25 inch opening screen, installation of a new screen handling (washing and compaction) equipment for the screens, upgrade of the screening room ventilation to that of Ten States Standards, modification of the screen room structural roof as necessary to facilitate screen replacement , upgrade of the screening room electrical to comply with National Fire Protection Association (NFPA) 820, Standard for Fire Protection in Wastewater Treatment and Collection Facilities.

Reasons for Project:

Headworks improvements are needed to reduce and prevent the occurrence of Sanitary Sewer Overflow (SSO) events. Reliable raw sewage pumping of expanded capacity is needed, in conjunction with the recently constructed Equalization Basin and various Collection System Improvements, to effectively convey and handle peak wet weather flows. Firm WWTP pumping capacity will be increased from 30 MGD to 47 MGD to match the Plant's hydraulic capacity. Existing equipment to be replaced is beyond its useful life and maintenance intensive. Spare parts are no longer available for much of the existing electrical switchgear. The new screen is needed to replace an existing unit which is no longer protective of the pumps and downstream equipment. Screenings handling improvements will eliminate restrictions in removing screened material from the screen installed in recent years. This will provide for screening process redundancy and eliminate flow restrictions during wet weather events. The IDEM Agreed Order requires the utility to maximize the flow through the WWTP in order to reduce overflows and bypasses.

6. Dillman Road Dechlorination and Disinfection Improvements. The dechlorination portion of this project is among those required under the compliance plan for the Agreed Order and is also necessary to comply with the terms of the NPDES Permit for the plant. The cost of that portion of the project is \$630,000. Given the nature of the work which must be done during the dechlorination project, it makes sense to do the disinfection improvements concurrently as it will save a considerable amount on cost and reduce disruption of activities at the plant. The disinfection improvements cost is \$252,500, which together with the dechlorination cost totals \$882,500 and would require at additional 0.60% increase in the wastewater rate in order to fund the annual debt service. The impact on the average residential customer consuming 5000 gallons per month due to this additional 0.60% rate increase would be an increase in the sewer bill of \$0.13.

The Utilities Engineering Department has provided the following information regarding this project:

DILLMAN ROAD PLANT DISINFECTION AND DECHLORINATION IMPROVEMENTS

Project Includes:

Conversion from gaseous chlorine disinfection to sodium hypochlorite. Modification to Filter Building HVAC, electrical distribution system, supervisory control and data acquisition system, fiberglass reinforced polyethylene tanks with containment provisions, metering pumps, mechanical appurtenances.

Installation of chemical storage, metering and application equipment to provide dechlorination of plant effluent. This requires modifications to Filter Building HVAC and electrical distribution system, and the addition of supervisory control and data acquisition system, fiberglass reinforced polyethylene tanks with containment provisions, metering pumps, and mechanical appurtenances.

Reasons for Project:

Project eliminates hazardous gaseous chlorine thereby providing a safer environment for on-site plant personnel and the surrounding residences and businesses. Constructing this project concurrently with the Dillman WWTP Dechlorination project will result in an overall reduction in cost for the combined projects. In addition, it is likely that gaseous chlorine elimination will soon be required by regulation.

Dechlorination removes chlorine from the plant effluent prior to being discharged to the environment. This removal reduces the formation of harmful chlorinated compounds that could occur with naturally occurring organic materials in the environment. Dechlorination was required to be in place by April 1, 2005 in order to comply with the Dillman Road WWTP 2004 NPDES Permit, and a temporary dechlorination set up has been installed. However, a more satisfactory permanent solution is needed to deal with this issue.

Stormwater Utility

The revenue produced under the current stormwater utility rate structure is sufficient to cover ongoing operating and maintenance expenses, extensions and replacement, bond financing to retire the one-year BAN obtained in January of 2004 to cover stormwater work on the College Mall Road and Miller Showers Park projects. That BAN payoff is in the amount of \$2,713,714. In addition, the revenue produced by the current rate will produce sufficient revenue to fund approximately \$3.8 million in major stormwater projects. Before the stormwater utility was created a “Stormwater Inventory Assessment Report” was completed which recommended planning and construction of projects over a ten year period. The projects on that list which could be completed without adjusting the stormwater rate include:

1. Jordan River, Spankers Branch Under Walnut St. The project includes replacement of approximately 860 linear feet of aging and failing concrete box culvert and installation of new storm inlets on Walnut St. Probable cost will be \$2,300,000 and would be funded by long term financing.
2. Jordan River, Walnut St. To Washington St. The project includes replacement of approximately 350 linear feet of aging and failing concrete box culvert, ties into work done on Walnut St. as part of a County project as well as the 2nd and Washington improvements completed several years ago. This establishes the target storm flow capacity for a major storm conveyance system through downtown Bloomington. The existing box culvert is substantially undersized for the downstream end of the Jordan River. This project will cost approximately \$1,553,190 and would be included in the long term financing proposed for the Jordan River, Spankers Branch project discussed above.

As explained above, no increase in stormwater rates will be necessary to pursue these projects. These projects are critical to addressing our obligation to construct infrastructure which diverts stormwater from the wastewater system, which means they all help address issues related to the Agreed Order, the NPDES Permit and current and future regulations.

Summary of Proposed Rate Adjustments

The rate adjustments and bond authorization required for wastewater operation, maintenance and capital projects are summarized as:

	Capital Cost	Revenue Increase Required	Percentage Rate Increase	Cumulative Rate Change
WASTEWATER: Current Fee				\$22.17
“Catch-up” and O & M	NA	\$587,170	5.18%	23.32
Wet Weather Program	\$3,000,000	211,306	1.86%	23.73
Building Construction	1,200,000	92,338	0.81%	23.91
Blucher Poole Phase II Improvements	3,400,000	261,518	2.31%	24.42
Dillman Road Headworks Improvements	3,350,000	257,713	2.27%	24.93
Dillman Road Disinfection and Dechlorination Improvements	882,500	67,876	0.60%	\$25.06
Totals	\$11,832,500.00	\$1,477,921.00	13.03%	

The stormwater utility requires no rate adjustment. The proposed capital project funding is indicating below:

	Capital Cost	Revenue Increase Required	Percentage Rate Increase	Cumulative Rate Change
STORMWATER: Current Fee				\$2.70
Repayment of BAN	\$2,713,714	\$0	0%	2.70
Jordan River, Spankers Branch under Walnut	2,300,000	0	0%	2.70
Jordan River, Walnut to Washington	1,553,190	0	0%	\$2.70
Totals	\$6,566,904.00	\$0.00	0%	

The total bond authorization we would be seeking would be \$11,832,500 for wastewater projects and \$6,566,904 for stormwater projects for a total of approximately \$18,399,404. We would anticipate that we would sell revenue bonds for the following projects since they would not qualify for SRF funding:

Administration Building	\$1,200,000
Repayment of Stormwater BAN (taxable bonds)	\$2,713,714
Jordan River, Spankers Branch under Walnut	2,300,000
Jordan River, Walnut to Washington	1,553,190
Total	\$7,766,904

We would anticipate that the other capital projects would be SRF funded with amounts and closing estimated to be :

SRF Funding Closing in 2006:	
Wet Weather Program	\$3,000,000
Blucher Poole Phase II Improvements	3,400,000
Total	\$6,400,000

SRF Funding Closing in 2007:	
Dillman Road Headworks Improvements	3,350,000
Dillman Road Disinfection and Dechlorination Improvements	882,500
Total	\$4,232,500

The overall Sewage Works rate adjustment would be as follows:

Current Total Fee	\$24.87
Wastewater Adjustment	2.89
Stormwater Adjustment	0.00
Total Adjusted Fee	\$27.76
Percentage Increase	11.62%

If the proposed rate adjustment is made for the wastewater utility, the average annual increase for the wastewater utility and the Sewage Works as a whole over the seven year period from fall 1998 to fall 2005 are summarized as follows:

	Billing Amount in 1998	Billing Amount w/ Proposed Rates	Total Amount of Increase	Total Percentage Increase	Average Annual Percentage Increase
Wastewater	\$18.13	\$25.06	\$6.93	38.22%	5.46%
Wastewater with Stormwater	\$20.48	\$27.76	\$7.28	35.57%	5.08%

To get a sense of how Bloomington wastewater charges compares to other wastewater service providers in Indiana, I went to the IURC website where surveys of billings are listed. The most recent survey is dated September 2004, and it includes 65 IURC regulated sewer utilities. I selected those which had gone through rate cases in 1995 or later, i.e., the last ten years, and I found that the average billing for sewer service for 5000 gallons of water usage in \$43.32 for the remaining 48 utilities. (Of these 48 utilities, 7 are not-for-profits and 41 are investor owned.) We are proposing to charge \$25.06 for the same service, i.e., the wastewater only portion of the billing. Crowe Chizek compiles its own survey of utility charges for cities with a population over 30,000. Of the 19 sewer utilities which have done rate cases in the last ten years and which are not subsidized with property taxes, the average monthly sewer bill for 5000 gallons water usage is \$20.03, so we are already somewhat higher than that average, but 20% of the utilities listed are higher than our proposed new rate of \$25.06.

Rate and Bond Ordinance Provisions

Ordinance 05-35 authorizes the issuance of Sewage Works Revenue Bonds in an amount not to exceed eighteen million nine hundred and thirty thousand dollars to be used to fund the stormwater and wastewater capital projects listed in Exhibit A attached to the bond ordinance. This amount is higher than the total of the projects cost estimates in this memo because costs of issuance have been added. The terms of Ordinance 05-35 give CBU the option of either selling revenue bonds on the open market or obtaining financing through the Indiana State Revolving Fund (SRF). While SRF financing is preferable because of its more favorable terms, there are limitations on the kinds of projects which can be financed with SRF funds.

It is anticipated the bonds authorized by Ordinance 05-35 will be sold over several series through the period that the projects are to be completed. Open market revenue bonds will be sold to finance the stormwater projects and the Sewage Works portion of the new administration building. SRF financing will be sought for all projects which qualify. CBU has found that, while the SRF application and bond issuance process can be more cumbersome and time-consuming than selling revenue bonds on the open market, the benefit of the low SRF interest rate makes it worth the additional effort.

Approval of this Ordinance is just the beginning of the bond issuance process. To complete that process CBU must be able to demonstrate that it is financially able to meet the obligations imposed when the bonds are sold, just as an applicant for a loan must show financial responsibility. In addition, since the funds required to pay the bonds come from revenues, CBU must seek approval of the Common Council to adjust rates to realize those revenues before the bonds upon which those rates depend are issued. This will be accomplished by the Council's adoption of Ordinance 05-34 which adjustment rates to a level where the bonds can be sold.

If you have legal or procedural questions regarding the Rate or Bond Ordinance or please feel free to contact me at 349-3426.

ORDINANCE 05-34

**TO AMEND TITLE 10
OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED “WASTEWATER”
(Wastewater Rate Adjustment)**

WHEREAS, the City of Bloomington, Indiana (the “City”) has heretofore constructed and has in operation a wastewater collection system and treatment plants for the purpose of collecting and treating sewage wastewater and conveying the same away from the premises where produced; and

WHEREAS, the Utilities Service Board has recommended, after due consideration, including a public meeting on November 28, 2005, that adjustments to rates and charges of the wastewater utility should be approved by the Common Council in respect to the existing wastewater;

NOW THEREFORE BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Section 10.08.040 of the Bloomington Municipal Code, entitled “Rates—Metered water users,” shall be amended to read as follows:

10.08.040 Rates—Metered water users. General service rates shall be applicable to all metered water users except those with other than average strengths of BOD and suspended solids. The general service rates shall be determined as follows:

Monthly service charge (per meter)	\$4.26
User Charge	
Charge per 1,000 gallons per month for all billable usage:	
Residential ^(a)	\$4.16
Commercial	\$4.16
Indiana University	\$4.16
Industrial ^(b)	\$4.16

(a) Residential summer rates for billings issued during the months of June, July, August, and September shall be based upon the average metered water consumption for billings issued during the months of April and May or actual usage, whichever is less. In order to more accurately reflect the actual wastewater usage of these customers, the Utilities Services Board may, by the adoption of a resolution, change the months used to set the summer rates and the length of time the summer rates are in effect. All other users shall be charged on the basis of one hundred percent of metered water consumption subject to user proof of lower wastewater use.

(b) Industrial user rates and charges shall be based on the quantity of water used as well as any special service rates that may apply.

SECTION 2 Section 10.08.070, entitled “Rates—Nonmetered users,” shall be amended to read as follows:

10.08.070 Rates—Nonmetered users. The minimum rate or charge for any service where the user is not a metered water user shall be four hundred and fourteen dollars and thirty-seven cents (\$414.37) per year, payable monthly. At the request of the utility or user, a meter which measures either the water use of the customer or the discharge into the sanitary sewer system shall be installed at the user's expense. Where a meter has been installed or the customer's water use records are available at no charge from the water supplier, the charge for service shall be computed on the basis of water usage plus monthly service charge, just as it is with a metered user, subject to the annual minimum charge.

SECTION 3. Subsection (b) of Section 10.08.110, entitled "Special service rates," shall be amended to read as follows:

(b) Special Rates. Special service rates shall be determined as follows:

Monthly service charge (per meter)	\$4.26
Special laboratory analysis monthly charge	
Strength of BOD and SS sampling charge	89.41
Grease and oil sampling charge	83.82
Metal sampling charge (per metal per test)	18.63
User Charge	
Charge per 1,000 gallons per month for all billable usage:	
Non-excessive strength rate	4.26
Extra Strength Charge	
Charge per pound per month for all strength in excess of 300 ppm:	
BOD	0.202
Suspended Solids	0.164

SECTION 4. Severability. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other parts of this ordinance which can be given effect without the invalid part, and to this end the provisions of this chapter are declared to be severable.

SECTION 5. This ordinance shall be in full force and effect as of January 1, 2006 subject to its passage by the Common Council of the City of Bloomington, Monroe County, Indiana, and approval of the Mayor.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2005.

ANDY RUFF, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2005.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2005.

MARK KRUZAN, Mayor
City of Bloomington

Synopsis

This ordinance amends the rates and charges included in Title 10 of the Bloomington Municipal Code, entitled “Wastewater”, to reflect inflation and increased costs of supplying wastewater collection and treatment services to customers of the wastewater utility, and for financing required capital improvements to the system. The provisions will go into effect on January 1, 2006.

~~strike~~ – proposed deletion
bold – proposed addition
▶ -- relevant section

**TITLE 10 OF THE BLOOMINGTON MUNICIPAL CODE
ENTITLED “WASTEWATER”**

AS AMENDED BY ORDINANCE 05-34

Section 1 of Ord 05-34 amends §10.08.040 “Rates – Metered water users”

Section 2 of Ord 05-34 amends §10.08.070 “Rates – Nonmetered users”

Section 3 of Ord 05-34 amends §10.08.110(b) “Special service rates”

Chapter 10.08

WASTEWATER RATES AND CHARGES

Sections:

- 10.08.010 Rates—Generally.**
- 10.08.020 Rates—Biennial review.**
- 10.08.030 Rates—Based on quantity of water used.**
- 10.08.035 Rate—Establishment of stormwater utility.**
- 10.08.040 Rates—Metered water users.**
- 10.08.045 Rates—Stormwater utility users.**
- 10.08.050 Rates—Exemptions.**
- 10.08.060 Rates—Utility measurement of water.**
- 10.08.070 Rates—Nonmetered users.**
- 10.08.080 Billing.**
- 10.08.085 Lifeline service.**
- 10.08.090 Delinquencies—Late payment charge.**
- 10.08.100 Liens for nonpayment.**
- 10.08.110 Special service rates.**
- 10.08.120 Waste haulers—Charges.**
- 10.08.130 Inspection charge.**
- 10.08.140 Connection fee.**
- 10.08.150 Laboratory charges.**

10.08.010 Rates—Generally.

Rates or charges shall be collected for the use of and the service rendered by the utility from the owners of each and every lot, parcel of real estate, or building that is connected with and uses the utility by or

through any part of the wastewater treatment system, and the rates and charges shall be payable as provided in this chapter. (Ord. 80-26 § 1 (part), 1980).

10.08.020 Rates—Biennial review.

Not less than every two years the board shall review the wastewater contribution of users and user classes, the total cost of operation and maintenance of the treatment works, and its user charge system. The board shall, subject to enactment by the common council, revise the charges for users and user classes to maintain the proportionate distribution of operation and maintenance costs among the user and user classes and to generate sufficient revenue to pay the total operation and maintenance costs necessary for proper operation and maintenance of the treatment system, bond payments, and routine improvements. (Ord. 80-26 § 1 (part), 1980).

10.08.030 Rates—Based on quantity of water used.

(a) The residential user rates and charges shall be based upon the quantity of water used on or in the property or premises subject to the rates and charges, as water is measured by the city water meter there in use, except as otherwise provided. Residential summer rates for the months of June, July, August, and September shall be based upon the average of April and May or actual usage, whichever is less. All other users shall be charged on the basis of one hundred percent of metered water consumption subject to user proof of lower wastewater use.

(b) Industrial user rates and charges shall be based on the quantity of water used as well as any special service rates that may apply. (Ord. 80-26 § 1 (part), 1980).

10.08.035 Rate—Establishment of stormwater utility.

There is hereby established within the city wastewater utility the powers, duties and responsibility for the construction, operation and maintenance for the stormwater utility in accordance with Indiana Code 36-9-23-1 et seq. The original jurisdictional boundaries of the stormwater utility are reflected in Exhibit A, attached hereto and incorporated herein; said boundaries may be amended or extended with the approval of the utilities service board. (Ord. 98-29 § 2, 1998).

10.08.040 Rates—Metered water users.

General service rates shall be applicable to all metered water users except those with other than average strengths of BOD and suspended solids. The general service rates shall be determined as follows:

		Portion of Rate Applicable to:		
		Operations, Maintenance, and Replacement Expenses	Capital Related Costs	Total
Monthly service charge (per meter)	\$4.26	\$2.75	\$1.02	\$3.77
User Charge				
Charge per 1,000 gallons per month for all billable usage:				
Residential ^(a)	\$4.16	2.68	1.00	\$3.68
Commercial	\$4.16	2.68	1.00	\$3.68
Indiana University	\$4.16	2.68	1.00	\$3.68
Industrial ^(b)	\$4.16	2.68	1.00	\$3.68

Notes:

(a) Residential summer rates for billings issued during the months of June, July, August, and September shall be based upon the average metered water consumption for billings issued during the months of April and May or actual usage, whichever is less. In order to more accurately reflect the actual wastewater usage of these customers, the Utilities Services Board may, by the adoption of a resolution, change the months used to set the summer rates and the length of time the summer rates are in effect. All other users shall be charged on the basis of one hundred percent of metered water consumption subject to user proof of lower wastewater use.

(b) Industrial user rates and charges shall be based on the quantity of water used as well as any special service rates that may apply.

(Ord. 03-24 § 1, 2003: Ord. 00-34 § 1, 2000: Ord. 99-31 § 1, 1999: Ord. 98-29 § 3, 1998: Ord. 97-01 § 1, 1997: Ord. 94-41 § 1, 1994: Ord. 89-36 § 1, 1989: Ord. 81-16 §§ 1, 5, 1981: Ord. 80-26 § 1 (part), 1980).

10.08.045 Rates—Stormwater utility users.

(a) The rates and charges of the stormwater utility shall be as follows:

The stormwater system user fee is applicable to all utility customers with accounts within the stormwater system service area. All customers classified by the utility as being single family residential shall pay a monthly charge of \$2.70. All other customers shall be charged based upon the amount of runoff generated by the customer. The amount of runoff subject to the stormwater utility rate shall be determined by a calculation based upon the following formula, minus any

credits, as approved by the Utilities Service Board:

Runoff generated by non-Single Family <u>Residential Customer</u>	Multiplied times \$2.70
Runoff generated by the average Single Family Residential Customer	

(b) These rates and charges shall be billed monthly, and all provisions of the Indiana Code, the Bloomington Municipal Code and the City Utilities Department Rules, Regulations and Standards of Service which apply to the payment and collection of rates and charges for wastewater services shall apply equally to the rates and charges for stormwater utilities services. (Ord. 03-24 § 2, 2003; Ord. 01-15 § 1, 2001; Ord. 99-04 § 3, 1999; Ord. 98-29 § 4, 1998).

10.08.050 Rates—Exemptions.

Water which is used in process of manufacture or for any other purpose which does not discharge into the sanitary sewers shall be exempted; provided, however that the property owner shall install, under the supervision of the utility, the necessary meters to indicate the amount of water used which does not discharge into the sanitary sewers. All meter installation and maintenance costs shall be paid by the user, including a monthly service charge as provided in Section 10.08.040. (Ord. 80-26 § 1 (part), 1980).

10.08.060 Rates—Utility measurement of water.

(a) In the event a lot, parcel of real estate, or building discharging wastewater, water, or other liquids into the wastewater treatment system, either directly or indirectly, is not a user of water supplied by the utility and the water used is not measured by a utility water meter or by a meter acceptable to the utility, then the amount of water used shall be otherwise measured or determined by the utility in order to determine the rate or charge provided for in this chapter, or the user may at his expense install and maintain a meter acceptable to the utility for this purpose.

(b) In the event a lot, parcel of real estate, or building discharges industrial wastewater either directly or indirectly into the wastewater treatment system and the utility finds it is not practical to attempt to measure such wastes by meter, it may be measured in such manner and by such methods as the utility may find practical in the light of the conditions and attendant circumstances in order to determine the rate or charge according to the corresponding rates per thousand gallons provided in this chapter. Higher than average wastewater strengths shall pay accordingly. (Ord. 80-26 § 1 (part), 1980).

10.08.070 Rates—Nonmetered users.

▶ The minimum rate or charge for any service where the user is not a metered water user shall be ~~three hundred sixty-six~~ **four hundred and fourteen** dollars and ~~thirty-seven~~ **seventy** cents per year, payable monthly, ~~with two hundred and sixty-seven dollars and sixty-nine cents attributable to operation, maintenance, replacement and expense costs, and ninety-nine dollars and one cent attributable to capital related costs.~~ At the request of the utility or user, a meter which measures either the water use of the customer or the discharge into the sanitary sewer system shall be

installed at the user's expense. Where a meter has been installed or the customer's water use records are available at no charge from the water supplier, the charge for service shall be computed on the basis of water usage plus monthly service charge, just as it is with a metered user, subject to the annual minimum charge. (Ord. 03-24 § 3, 2003: Ord. 00-34 § 2, 2000: Ord. 98-29 § 5, 1998: Ord. 94-41 § 2, 1994: Ord. 89-36 § 2, 1989: Ord. 81-16 § 2, 1981: Ord. 80-26 § 1 (part), 1980).

10.08.080 Billing.

Rates and charges shall be billed monthly and shall be due according to the collection policy as adopted by the Utility Service Board. (Ord. 94-41 § 3, 1994: Ord. 89-36 § 3, 1989: Ord. 80-26 § 1 (part), 1980).

10.08.085 Lifeline service.

Beginning February 23, 1981, and ending February 23, 1982, those users who are heads of households aged sixty-two or over who are dependent on Social Security or Social Security/SSI and whose total annual household income is at or below one hundred twenty-five percent of poverty level shall receive a credit on that portion of their monthly wastewater bill that is equivalent to the amount of the capital-related costs as established in Section 10.08.040. (Ord. 81-16 § 7, 1981).

10.08.090 Delinquencies—Late payment charge.

In the event a net bill is not paid within seventeen days from the mailing of the bill, it shall become a delinquent bill and a late payment charge may be added in the amount permitted by applicable state laws and regulations. (Ord. 03-24 § 4, 2003: Ord. 80-26 § 1 (part), 1980).

10.08.100 Liens for nonpayment.

(a) In addition to any other method of collection of rates and charges, including the late payment charge, the utility may foreclose liens on property when rates and charges become delinquent. The utility may recover the amount due, the penalty, and reasonable attorney's fees in the manner provided by IC 36-9-23-31.

(b) The utility shall have the right to foreclose the lien against rental property regardless of whether the delinquency in payment was created by the tenant or owner of the property. (Ord. 89-14 § 4, 1989; Ord. 80-26 § 1 (part), 1980).

10.08.110 Special service rates.

(a) Special service rates shall be applicable to all industrial users who generate wastewater which contains any nonconventional pollutants or strengths of BOD or SS that exceed the system average strengths of three hundred parts per million BOD or three hundred parts per million SS as determined by special laboratory analysis by the utility's central laboratory. Other special service rates shall be charged on a case-by-case basis for toxic pollutant discharges, with the charges being based on the difficulty of treating the toxic pollutant as well as sampling, testing, and disposal charges. Strength charges are to be computed on actual measured strengths and volumes.

(b) Special Rates. Special service rates shall be determined as follows:

		Portion of Rate Applicable to:		
		Operations, Maintenance, and Replacement Expenses	Capital Related Costs	Total
Monthly service charge (per meter)	\$4.26	\$2.75	\$1.02	\$3.77
Special laboratory analysis monthly charge				
Strength of BOD and SS sampling charge	89.41			79.12
Grease and oil sampling charge	83.82			74.18
Metal sampling charge (per metal per test)	18.63			16.49
User Charge				
Charge per 1,000 gallons per month for all billable usage:				
Non-excessive strength rate	4.26	2.68	1.00	3.68
Extra Strength Charge				
Charge per pound per month for all strength in excess of 300 ppm:				
BOD	0.202	0.137	0.042	0.179
Suspended Solids	0.164	0.103	0.042	0.145

(Ord. 03-24 § 5, 2003; Ord. 00-34 § 3, 2000; Ord. 99-31 § 2, 1999; Ord. 98-29 § 6, 1998; Ord. 97-01 § 2, 1997; Ord. 94-41 § 4, 1994; Ord. 89-36 § 4, 1989; Ord. 81-16 §§ 3, 6, 1981; Ord. 80-26 § 1 (part), 1980).

10.08.120 Waste haulers—Charges.

(a) Waste shall only be accepted for treatment by the utility if the treatment processes and final effluent are not adversely affected. All haulers shall provide the utility with the names and addresses of the users whose waste is brought for treatment. The director shall designate the site where the waste will be accepted.

(b) The following types of waste may be accepted for treatment by the city utilities:

(1) Domestic Septage. Domestic septage refers to the waste contained in, or removed from, septic tanks or holding tanks which serve residential homes or other sources which generate only food-based waste. Each truckload delivered will be assumed to be a full load unless proven otherwise by the hauler.

(2) Grease Waste. Grease waste is the waste contained in, or removed from, grease traps or other similar devices which have been installed for the purpose of retaining the portion of the waste stream which floats on water. For the purpose of this document, grease waste refers to greases of plant or animal origin. Petroleum based oils and greases are specifically prohibited from being discharged into the wastewater system. Analysis of the grease wastes may be required

before acceptance for treatment and disposal. The charge will be based on the calculated volume of the pit or trap. There will be no additional charge for the water used to wash the grease from the pit.

(3) Wastewater Treatment Plant Waste. Wastewater treatment plant waste includes the excess solids generated at municipal or semi-public wastewater treatment plants and/or the collection systems associated with those treatment plants. The waste may be in the form of sludge, mixed liquor, lagoon dredgings, or waste from lift stations, and must be compatible with the treatment system's processes and capacities. Wastes which jeopardize compliance with the Part 503 rules concerning land application of sludge are prohibited. The board shall establish parameters for the testing of these wastes. The waste hauler will be responsible for the cost of any testing required. Trucks delivering these wastes will be assumed to be full.

(4) Commercial/Industrial Waste. Commercial/industrial waste includes wastes generated by industrial or commercial operations, or an operation which combines domestic waste with waste generated from industrial operations. This waste may be the product of some one-time operation, or may be accumulated in some form of holding tank, such as a septic tank. The wastes may be delivered to the system facilities only after the written request for such disposal has been approved by the director, or his designee, on a case-by-case basis. The board shall establish parameters for the testing of these wastes. The waste hauler will be responsible for the cost of any testing required. Trucks delivering these wastes will be assumed to be full.

(5) Out-of-County Waste. For each of the above listed categories of waste, there shall be a surcharge of fifty percent added to the respective fees for any waste which originates at any source outside the boundaries of Monroe County.

(6) The charge for each delivery of the types of waste described above shall be:

Portion of Rate Applicable to

	Operations, Maintenance, and Replacement Expenses	Capital Related Costs	Total	
Domestic Septage — first 500 gallons		\$ 7.52	\$ 2.78	\$10.30
Each additional 100 gallons	0.43	0.16	0.59	
Grease Waste — first 500 gallons		21.48	7.95	29.43
Each additional 100 gallons	0.43	1.59	5.89	
Wastewater Treatment Plant Waste				
First 500 gallons	16.12	5.96	22.08	
Each additional 100 gallons	3.23	1.19	4.42	
Commercial/Industrial Waste				
First 500 gallons	16.12	5.96	22.08	
Each additional 100 gallons	3.23	1.19	4.42	

(c) The fees for the treatment and disposal of domestic septage shall be charged to the waste hauler who transports the waste to the treatment facility for disposal. Any licensed waste hauler may purchase tickets which authorize that hauler to dispose of one load of domestic septage.

Generators of nondomestic waste must request authorization to dispose of wastes in the utility treatment works. The application will be reviewed by staff and, if approved, the tickets for disposal of the waste may be purchased by the waste generator. Generators may purchase tickets in the manner outlined above. The generator must provide the appropriate ticket(s) to the waste hauler and the hauler must present the ticket(s) to the staff at the treatment facility as evidence that the disposal of the waste has been authorized.

Additional procedures that further promote an orderly system for the delivery, tracking and payment of these wastes may be adopted by the board. (Ord. 00-34 § 4, 2000; Ord. 98-29 § 7, 1998; Ord. 97-01 § 3, 1997; Ord. 94-41 § 5, 1994; Ord. 89-36 § 5, 1989; Ord. 80-26 § 1 (part), 1980).

10.08.130 Inspection charge.

All inspections during normal business hours shall be free of charge. All inspections during overtime hours shall be at the rate of twelve dollars and fifty cents per hour. (Ord. 80-26 § 1 (part), 1980).

10.08.140 Connection fee.

The connection fee is applicable to all utility customers within the wastewater system service area. The following fees shall be charged for each new connection to the wastewater system.

(a) All customers classified by the Utility as being single family residential shall pay a base fee of \$1,000.

(b) All customers classified by the Utility as multi-family residential shall pay a charge of 65% times base fee times the number of units to be served by the connection to the wastewater system, minus any credits, as approved by the Utilities Service Board.

(c) All customers classified by the Utility as commercial shall pay the following fee for each connection to the wastewater system, minus any credits, as approved by the Utilities Service Board:

Domestic Water Meter Size In Inches	Connection Fee
3/4	base fee
1	4 times base fee
1 1/2	10 times base fee
2	19 times base fee
3	26 times base fee
4	58 times base fee
6 and above	case by case basis

(c) All customers classified by the utility as industrial shall pay a fee for each connection to the wastewater system. This fee shall be charged based upon the amount of flow generated by the customer. The amount of the fee shall be determined by a calculation based upon the following formula, minus any credits, as approved by the Utilities Service Board: (Flow generated by industrial customer divided by flow generated by the average Single Family Residential Customer) multiplied by base fee.

(d) If an additional or larger meter is installed for an existing non-single family residential customer, a connection fee shall be assessed based on the following formula, minus any credits, as approved by the Utilities Service Board:

(Additional flow generated by customer divided by flow generated by the average Single Family Residential Customer) multiplied by base fee.

(Ord. 01-16 § 1, 2001; Ord. 97-01 § 4, 1997; Ord. 94-41 § 6, 1994).

10.08.150 Laboratory charges.

The following charges shall apply for laboratory tests performed on samples delivered to the wastewater laboratory.

Alkalinity	\$ 9.00
Ammonia	13.00
BOD	16.00
Chlorine	8.00
COD	19.00
Cyanide	21.00
Fluoride	11.00
Hardness	9.00
Nitrates	16.00
Oil & Grease	37.50
pH	3.00
Phosphates	17.00
Sulfates	16.00
Suspended Solids	9.00
Dissolved Solids	9.00
Total Solids	12.00
Volatile Solids	12.00
Total Coliform	10.00
Fecal Coliform	10.00
E. Coli	10.00
H. Plate Count	10.00
Cadmium	12.00
Chromium	12.00
Copper	12.00
Iron	12.00
Lead	15.00
Manganese	12.00
Nickel	12.00
Silver	15.00
Zinc	12.00

(Ord. 97-01 § 5, 1997).

ORDINANCE 05-35

**AN ORDINANCE TO AUTHORIZE ISSUANCE OF
SEWAGE WORKS REVENUE BONDS
(For Wastewater and Storm Water Projects)**

- WHEREAS, the City of Bloomington, Indiana (the "City") has heretofore established, constructed and financed a municipal sewage works and now owns and operates the sewage works pursuant to IC 36-9-23, and other applicable laws; and
- WHEREAS, the Common Council of the City now finds that certain wastewater and storm water improvements, additions and extensions are necessary; and that preliminary design plans and cost estimates have been prepared and filed by the engineers employed by the City for the construction of said improvements, additions and extensions, which plans and estimates have been or will be approved by the Utility Service Board (the "Board") and by all governmental authorities having jurisdiction, including, particularly, the Indiana Department of Environmental Management; and
- WHEREAS, the City has obtained engineer's estimates of the costs for the construction of said improvements, additions and extensions and will advertise for and receive construction bids therefor; that on the basis of said estimates, the maximum estimated cost of the projects, as defined in IC 36-9-23 and IC 36-9-1, including incidental expenses, is in the amount of Eighteen Million Nine Hundred Thirty Thousand Dollars (\$18,930,000); and
- WHEREAS, the Common Council has been advised that a portion of the projects will qualify for financing through the State Revolving Loan Fund Program ("SRF Program") administered by the Indiana Finance Authority (the "Authority"); and
- WHEREAS, there are no sewage works funds on hand for application on the costs of the projects which shall be financed by the issuance of sewage works revenue bonds, in one or more series, in an aggregate amount not to exceed \$18,930,000, and, if necessary, bond anticipation notes ("BANs"); and
- WHEREAS, the Common Council finds that there are now outstanding bonds of the sewage works consisting of (i) Sewage Works Revenue Bonds of 1999, Series A, dated May 1, 1999 ("1999 Bonds"), now outstanding in the amount of \$7,400,000 and maturing annually over a period ending January 1, 2029; (ii) Sewage Works Revenue Bonds of 2000, Series A, dated April 7, 2000 ("2000A Bonds"), now outstanding in the amount of \$3,326,000 and maturing annually over a period ending January 1, 2021; (iii) Sewage Works Revenue Bonds of 2000, Series B, dated June 30, 2000 ("2000B Bonds"), now outstanding in the amount of \$7,990,000 and maturing annually over a period ending January 1, 2021; (iv) Sewage Works Revenue Bonds of 2000, Series C, dated December 29, 2000 ("2000C Bonds"), now outstanding in the amount of \$3,860,000 and maturing annually over a period ending January 1, 2021; (v) Sewage Works Refunding Revenue Bonds of 2003, dated March 27, 2003 ("2003 Bonds"), now outstanding in the amount of \$16,955,000 and maturing annually over a period ending January 1, 2025; and (vi) Sewage Works Revenue Bonds of 2004, dated December 31, 2004 ("2004 Bonds"), now outstanding in the maximum principal amount of \$5,800,000 and maturing annually over a period ending January 1, 2026, which 1999 Bonds, 2000A Bonds, 2000B Bonds, 2000C Bonds, 2003 Bonds, and 2004 Bonds constitute a first charge upon the Net Revenues of the sewage works; and
- WHEREAS, the ordinances authorizing the issuance of the 1999 Bonds, 2000A Bonds, 2000B Bonds, 2000C Bonds, 2003 Bonds and 2004 Bonds (collectively, the "Outstanding Bonds") permit the issuance of additional bonds ranking on a parity with said Outstanding Bonds provided that certain conditions can be met, and the City finds that the finances of said sewage works will enable the City to meet the

conditions for the issuance of additional parity bonds and that, accordingly, the revenue bonds authorized herein to be issued in one or more series shall constitute a first charge on the Net Revenues of the sewage works on a parity with the Outstanding Bonds; and

WHEREAS, the bonds to be issued pursuant to this ordinance are to be issued subject to the provisions of the laws of the State of Indiana, including, without limitation, IC 36-9-23, as in effect on the issue date of the bonds issued hereunder (the "Act"), and the terms and restrictions of this ordinance; and

WHEREAS, the City desires to authorize the issuance of BANs hereunder, if necessary, payable solely from the proceeds of the sewage works revenue bonds issued to finance the aforementioned costs of the project and to authorize the refunding of said BANs, if issued; and

WHEREAS, the City will enter into a Financial Assistance Agreement with the Authority pertaining to the projects which qualify for the SRF Program and the financing thereof ("Financial Assistance Agreement"); and

WHEREAS, the Common Council has been advised that the purchase of municipal bond insurance, including a surety to provide a reserve in the Reserve Account continued herein, may be cost efficient; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing the issuance of revenue bonds and BANs have been complied with in accordance with the provisions of the Act;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA, THAT:

SECTION I. Construction of Projects. The City shall proceed with the construction of improvements, additions and extensions to its sewage works in accordance with the cost estimates and the preliminary design plans heretofore prepared and filed by the consulting engineers employed by the City, which cost estimates and preliminary design plans are by reference made a part of this ordinance as fully as if the same were attached hereto and incorporated herein and two copies of which are now on file in the Office of the City Clerk and are open for public inspection pursuant to IC 36-1-5-4, that the cost of construction of said improvements, additions and extensions to be financed by the issuance of sewage works revenue bonds shall not exceed the sum of \$18,930,000, plus investment earnings on the bond and BAN proceeds, without further authorization from this Common Council. The terms "sewage works," "sewage works system," "system," "works," and other like terms where used in this ordinance shall be construed to mean and include the Treatment Works, as defined in the Financial Assistance Agreement, and includes the existing sewage works system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions, and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired. A description of the proposed improvements, additions and extensions is set forth on Exhibit A attached hereto (collectively, the "Project"), and the Project shall be constructed in accordance with the plans heretofore mentioned, which plans are hereby approved. Said Project shall be constructed and the bonds herein authorized shall be issued pursuant to and in accordance with the Act.

SECTION II. Issuance of BANs and Bonds; Definitions.

- (1) The City shall issue, if necessary, its BANs for the purpose of procuring interim financing to apply to the cost of said Project. The City shall issue its BANs, in one or more series, in an aggregate amount not to exceed Eighteen Million Nine Hundred Thirty Thousand Dollars (\$18,930,000) to be designated "Sewage Works Bond Anticipation Notes, Series _____," to be completed with the appropriate series designation. Said BANs shall be numbered consecutively from 1 upward, shall be in multiples of One Dollar (\$1) as designated in the purchase

agreement for said BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 6% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs, which rate or rates may be variable, set in accordance with market standards), payable upon maturity. Each series of the BANs will mature no later than two (2) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 6% per annum (the exact rate or rates to be negotiated with the purchaser of the BANs, which rate or rates may be variable, set in accordance with market standards). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

The BANs shall be issued pursuant to IC 5-1-14-5 and may be sold to the Authority through the SRF Program pursuant to IC 4-4-11 and IC 13-18-13, or to any other purchaser pursuant to IC 5-1-14-5. The principal of and interest on the BANs shall be payable solely from the issuance of revenue bonds pursuant to and in the manner prescribed by the Act; provided, however, the City is hereby authorized to pledge Net Revenues of the sewage works to the payment of the principal of and interest on the BANs. The revenue bonds will be payable solely out of and constitute a first charge against the Net Revenues (herein defined as gross revenues of the sewage works of the City after deduction only for the payment of the reasonable expenses of operation, repair and maintenance) of the sewage works of the City, on a parity with the Outstanding Bonds.

- (2) The City shall issue in one or more series its "Sewage Works Revenue Bonds of _____, Series ____, " to be completed with the year in which the bonds are issued and series designation (the "Bonds") in an aggregate principal amount not to exceed \$18,930,000 for the purpose of procuring funds to be applied on the cost of the Project, funding a reserve for the Bonds, the payment of costs of issuance, refunding the BANs, if issued, and all other costs related to the Project, including a premium for municipal bond insurance and a surety for the reserve. One or more series of Bonds may be issued on taxable basis if bond counsel determines that any such series cannot be issued on a tax-exempt basis.

The Bonds shall be issued in the denomination of One Dollar (\$1) each if sold to the Authority through the SRF Program to finance Eligible Costs (as defined in the Financial Assistance Agreement) or Five Thousand Dollars (\$5,000) each or integral multiples thereof, if sold to finance other costs of the Project, numbered consecutively from 1 upward, dated as of the date of delivery (or, if sold to finance other costs of the Project, may be dated the first day of the month in which they are sold, if the City so elects, based upon the advice of its financial advisor) and interest shall be payable semiannually on January 1 and July 1 in each year, commencing on the first January 1 or July 1 after interest on the Bonds shall begin to accrue as designated by the Controller of the City with the advice of the City's financial advisor, and for Bonds sold to the Authority through the SRF Program, as set forth in the Financial Assistance Agreement. The Bonds shall be sold to the Authority through the SRF Program at a price of 100% of the par value thereof and, otherwise, at a price of not less than 98.75% of the par value thereof (or such higher percentage of the par value of the Bonds as the Controller of the City, with the advice of the financial advisor to the City, shall determine prior to the sale of the Bonds). The Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such Bonds shall bear interest at a rate or rates not exceeding eight percent (8%) per annum (the exact rate or rates to be determined by bidding or as negotiated with the Authority in conjunction with the SRF Program) and mature, or shall be subject to mandatory sinking fund redemption if term bonds are issued, annually on January 1 of each year over a period not to exceed thirty (30) years, or over a period not to exceed twenty (20) years from the date of substantial completion of the Project for Bonds sold to the Authority through the SRF Program, and in such amounts as will achieve as level annual debt service as practicable.

Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the successful bidder. Such term bonds shall have a stated maturity or maturities of January 1 in the years as determined by the successful bidder, but such years must correspond to the years and not extend beyond the final year of maturity ultimately established in accordance with the above paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates in accordance with the payment schedule that is implemented in accordance with the above paragraph.

Each series of Bonds shall rank on a parity with the other for all purposes, including the pledge of Net Revenues under this ordinance.

- (3) The following words and phrases shall have the following meanings unless the context otherwise requires:

"Act" means the provisions of IC 36-9-23, as in effect on the date of delivery of the Bonds.

"Ambac" means Ambac Assurance Corporation, a Wisconsin domiciled stock insurance company.

"Authority" means the Indiana Finance Authority.

"Bond and Interest Account" means the account continued within the Sewage Works Sinking Fund of Section 15 of this ordinance.

"Financial Assistance Agreement" means the agreement between the City and the Authority pertaining to any series of Bonds sold to the Authority through the SRF Program and the portion of the Project financed with such series of Bonds.

"General Account" means the account continued in Section 14 of this ordinance.

"MBIA" means MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504.

"1999 Bonds" means Sewage Works Revenue Bonds of 1999, Series A, dated May 1, 1999, now outstanding in the principal amount of \$7,400,000.

"1999 Financial Guaranty Agreement" means the agreement between the City and MBIA pertaining to the 1999 Surety Bond.

"1999 Municipal Bond Insurance Policy" means the municipal bond insurance providing the guarantee of the payment of debt service on the 1999 Bonds.

"1999 Surety Bond" shall mean the debt service reserve fund surety bond held in the Reserve Account for the 1999 Bonds and purchased from MBIA.

"Qualified Surety Bond" means a surety bond issued by an insurance company rated in the highest rating category by Standard & Poor's and Moody's and, if rated by A.M. Best & Company, must also be rated in the highest rating category by A.M. Best & Company. If any series of Bonds is purchased by the Authority, the surety bond securing such series shall be obtained from a company, and in a form, acceptable to the Authority. Further, the City's reimbursement obligation to any such bond insurer shall be subject to the prior and superior interest of, and shall be subordinate to the payment obligations due, the holders of the Outstanding Bonds, the Bonds, and any Parity Bonds.

"Registrar and Paying Agent" means the financial institution selected to act as the registrar and paying agent for the Bonds.

"Reserve Account" means the account continued within the Sewage Works Sinking Fund in Section 15 of this ordinance.

"SRF Program" means the State Revolving Loan Fund Program administered by the Authority in accordance with IC 13-18-13, to which the City expects to sell one or more series of Bonds issued under this ordinance.

"Sewage Works Improvement Fund" means the fund continued in Section 16 of this ordinance.

"Sewage Works Sinking Fund" means the sinking fund continued in Section 15 of this ordinance.

"2000A Bonds" means the "Sewage Works Revenue Bonds of 2000, Series A," dated April 7, 2000, now outstanding in the principal amount of \$3,326,000.

"2000B Bonds" means the "Sewage Works Revenue Bonds of 2000, Series B," dated June 30, 2000, now outstanding in the amount of \$7,990,000.

"2000C Bonds" means the "Sewage Works Revenue Bonds of 2000, Series C," dated December 29, 2000, now outstanding in the principal amount of \$3,860,000.

"2000 Guaranty Agreement" means the agreement between the City and Ambac pertaining to the 2000 Surety Bond.

"2000 Surety Bond" shall mean the debt service reserve fund surety bond held in the Reserve Account for the 2000A Bonds and 2000B Bonds and purchased from Ambac.

"2003 Bonds" means the Sewage Works Refunding Revenue Bonds of 2003, dated March 27, 2003, now outstanding in the principal amount of \$16,955,000.

"2003 Financial Guaranty Agreement" means the agreement between the City and MBIA pertaining to the 2003 Surety Bond.

"2003 Municipal Bond Insurance Policy" means the municipal bond insurance providing the guarantee of the payment of debt service on the 2003 Bonds.

"2003 Surety Bond" shall mean the debt service reserve fund surety bond held in the Reserve Account for the 2003 Bonds and purchased from MBIA.

"2004 Bonds" means the Sewage Works Revenue Bonds of 2004, dated December 31, 2004, now outstanding in the maximum principal amount of \$5,800,000.

SECTION III. Registrar and Paying Agent; Payments under the Surety Bond; Book-Entry Provisions.

- (1) The Board is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Bonds (the "Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Bonds. The Assistant Director-Finance of the utility is hereby authorized to enter into such agreements or understandings with the Registrar as will enable the institution to perform the services required of a registrar and paying agent. The Assistant Director-Finance of the utility is further authorized to pay such fees as the Registrar may charge for the services it provides as Registrar and Paying

Agent and such fees may be paid from the Sewage Works Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges. As to the BANs and as to any series of Bonds, if sold to the Authority through the SRF Program, the Controller shall serve as Registrar and Paying Agent and is hereby charged with the duties of Registrar and Paying Agent.

For any Bonds or BANs sold to the Authority through the SRF Program to finance Eligible Costs, the principal of and interest thereon shall be paid by wire transfer to such financial institution if and as directed by the Authority on the due date of such payment or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date. So long as the Authority is the owner of said Bonds or BANs in conjunction with the SRF Program, such Bonds and BANs shall be presented for payment as directed by the Authority.

For all other Bonds or if wire transfer payment is not required, the principal of the Bonds and the principal and interest on the BANs shall be payable at the principal corporate trust office of the Paying Agent. All payments of interest on the Bonds shall be paid by check, mailed one business day prior to the interest payment date to the registered owners thereof as the names appear as of the fifteenth day of the month preceding the interest payment date (the "Record Date") and at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the Bonds shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts.

Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal corporate trust office of the Registrar by the registered owner in person, or by its attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such Bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the

addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Assistant Director-Finance of the utility is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Assistant Director-Finance of the utility is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Sewage Works Sinking Fund continued in Section 15 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent.

Interest on the Bonds sold to the Authority through the SRF Program to finance Eligible Costs shall be payable from the date or dates as set forth in the Financial Assistance Agreement. Interest on all other Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

- (2) The City has determined that it may be beneficial to the City to have one or more series of Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). Any such series of Bonds may be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company.

With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this ordinance. The City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all

principal of and premium, if any, and interest on the Bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this ordinance shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this ordinance.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of a Depository Trust Company, the Registrar shall cause said Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as said Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from the

Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this ordinance and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

SECTION IV. Redemption of BANs and Bonds.

- (1) The BANs are prepayable by the City, in whole or in part, at any time upon 7 days' notice to the owner of the BANs without any premium.
- (2) No sooner than eight (8) years after the original date of the Bonds, the Bonds may be called for redemption, or on any date thereafter, on sixty (60) days' notice, in whole or in part, in inverse order of maturity for Bonds sold to the Authority through the SRF Program, and on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City for Bonds sold to any other purchaser, and by lot within a maturity, at face value, together with a premium no greater than 2%, plus accrued interest to the date fixed for redemption. The exact redemption dates and premiums shall be established by the Controller with the advice of the City's financial advisor prior to delivery of the Bonds.
- (3) If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or canceled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date as stated above.

If less than an entire maturity is called for redemption at one time, the Bonds to be redeemed shall be selected by the Registrar by lot within a maturity. Each authorized denomination amount shall be considered a separate bond for purposes of optional and mandatory redemption. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

- (4) In either case, notice of such redemption shall be given at least sixty (60) days prior to the date fixed for redemption for Bonds sold to the Authority through the SRF Program, and at least thirty (30) days prior to the date fixed for redemption for Bonds sold to any other purchaser, by mail unless the notice is waived by the registered owner of a Bond. Such notice shall be mailed to the address of the registered owners as shown on the registration records of the City as of the date which is sixty-five (65) days prior to such redemption date for Bonds sold to the Authority through the SRF Program and as of the date which is forty-five (45)

days prior to such redemption date for Bonds sold to any other purchaser. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption shall be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the principal office of the Paying Agent to pay the redemption price on the date so named. Coincidentally with the payment of the redemption price, the Bonds so called for redemption shall be surrendered for cancellation.

SECTION V. Execution and Negotiability. Each of the BANs and Bonds shall be executed in the name of the City by the manual or facsimile signature of the Mayor, countersigned by the manual or facsimile signature of its Controller and attested by the manual or facsimile signature of its Clerk, and the seal of the City shall be affixed, imprinted or impressed to or on each of the BANs and Bonds manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Bonds or BANs. In case any officer whose signature or facsimile signature appears on the Bonds or BANs shall cease to be such officer before the delivery of the Bonds or BANs, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The BANs and Bonds shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

The Bonds shall also be authenticated by the manual signature of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

SECTION VI. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly prior to delivery:

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF MONROE

CITY OF BLOOMINGTON
SEWAGE WORKS REVENUE
BOND OF _____, SERIES _____

Interest	Maturity	Original	Authentication	
<u>Rate</u>	<u>Date</u>	<u>Date</u>	<u>Date</u>	[CUSIP]

REGISTERED OWNER:

PRINCIPAL SUM:

The City of Bloomington, in Monroe County, State of Indiana, for value received, hereby promises to pay to the Registered Owner named above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above on [the Maturity Date set forth above] [January 1 in the years and amounts as set forth on Exhibit A attached hereto] (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon at the Interest Rate per annum stated above from [_____] [the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of

the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date or unless this bond is authenticated on or before _____ 15, _____, in which case it shall bear interest from the Original Date,] until the principal is paid, which interest is payable semiannually on the first days of January and July in each year, beginning on _____ 1, _____. Interest on the bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months.

[The principal of this bond is payable at the principal office of (the "Registrar" or "Paying Agent"), in the City of _____, Indiana.] All payments of [principal of and] interest on this bond shall be paid by [check, mailed one business day prior to the interest payment date] [wire transfer for deposit to a financial institution as directed by the Indiana Finance Authority (the "Authority") on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date] to the registered owner hereof as of the fifteenth day of the month preceding such interest payment date at the address as it appears on the registration books kept by the [Registrar] [_____ (the "Registrar" or "Paying Agent") in the _____ of _____, Indiana] or at such other address as is provided to the Paying Agent in writing by the registered owner. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY RESPECT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

This bond is one of an authorized issue of bonds of the City of Bloomington, [issued in series] of like date, tenor and effect, except as to rates of interest and dates of maturity; aggregating _____ Dollars (\$_____) [for this series]; numbered consecutively from 1 up; issued for the purpose of providing funds to be applied on the cost of [wastewater and storm water additions], extensions and improvements to the City's sewage works (the "Project"), funding a reserve for the bonds, [to refund interim notes issued in anticipation of the bonds] and to pay issuance expenses[, including a municipal bond insurance premium and the cost of a surety for the reserve]. This bond is issued pursuant to an Ordinance adopted by the Common Council of said City on the _____ day of December, 2005, entitled "An Ordinance to Authorize Issuance of Sewage Works Revenue Bonds (For Wastewater and Storm Water Projects)" (the "Ordinance"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 36-9-23 as in effect on the date of delivery of the bonds of this issue (the "Act"), the proceeds of which bonds are to be applied to the costs of the Project, funding a reserve for the bonds, [the payment of notes issued in anticipation of the bonds,] and expenses incurred in connection therewith[, including premiums for a municipal bond insurance policy and a surety for the reserve].

[Reference is hereby made to the Financial Assistance Agreement between the City and the Authority as to certain terms and covenants pertaining to the sewage works project and this bond (the "Financial Assistance Agreement").]

Pursuant to the provisions of the Act and the Ordinance, the principal of and interest on this bond and all other bonds of said issue, [including the Sewage Works Revenue Bonds of _____, Series _____ (the "Series _____ Bonds")] and any bonds hereafter issued on a parity therewith are payable solely from the Sewage Works Sinking Fund continued by the Ordinance (the "Sinking Fund") to be provided from the Net Revenues (defined as the gross revenues of the sewage works of the City after deduction only for the payment of the reasonable expenses of

operation, repair and maintenance) of the sewage works of the City. The payment of this bond ranks on a parity with the payment of the Outstanding Bonds (as defined in the Ordinance).

The City of Bloomington irrevocably pledges the entire Net Revenues of the sewage works to the prompt payment of the principal of and interest on the bonds authorized by the Ordinance, of which this is one, and any bonds ranking on a parity therewith, including the Outstanding Bonds [and the Series ____ Bonds], to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for services rendered by the utility as are sufficient in each year for the payment of the proper and reasonable expenses of Operation and Maintenance (as defined in the Financial Assistance Agreement) of the sewage works and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Ordinance. The rates and charges shall be established, to the extent permitted by law, to produce Net Revenues sufficient to pay at least 1.20 times the annual debt service on the Outstanding Bonds [, the Series ____ Bonds], the bonds of this issue and all amounts owed to the insurer of the 1999 Bonds, the 2000 Bonds and the 2003 Bonds under the terms of the Financial Guaranty Agreement pertaining to the 1999 Bonds, 2000 Bonds and the 2003 Bonds, respectively. If the City or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for in the Act, including the right to have a receiver appointed to administer the works and to charge and collect rates sufficient to provide for the payment of this bond and the interest hereon.

The City of Bloomington further covenants that it will set aside and pay into its Sinking Fund monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues of the works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of the sewage works, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the sewage works, as such principal shall fall due, and (d) an additional amount as a margin of safety to maintain the debt service reserve required by the Ordinance. Such required payments shall constitute a first charge upon all the Net Revenues of the sewage works on a parity with the aforementioned Outstanding Bonds and Series ____ Bonds.

The bonds of this issue maturing on and after January 1, ____, are redeemable at the option of the City on _____ 1, ____, or any date thereafter, on [thirty (30)] [sixty (60)] days' notice, in whole or in part, [in the order of maturity as determined by the City] [in inverse order of maturity] and by lot within a maturity, at face value, together with the following premiums:

___% if redeemed on _____ 1, ____, or thereafter
on or before _____, ____;
___% if redeemed on _____, ____, or thereafter
on or before _____, ____;
0% if redeemed on _____, ____, or thereafter
prior to maturity;

plus accrued interest to the date fixed for redemption.

[The bonds maturing on January 1, __ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on January 1 in the years and amounts set forth below:

<u>Year</u>	<u>Amount</u>
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*

* Final Maturity

If less than an entire maturity is called for redemption at one time, the bonds to be redeemed shall be selected by lot within a maturity by the Registrar. Each _____ Dollars (\$_____) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. [If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.]

Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration records of the City, as of the date which is [forty-five (45)] [sixty-five (65)] days prior to such redemption date, not less than [thirty (30)] [sixty (60)] days prior to the date fixed for redemption unless the notice is waived by the registered owner of this bond. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with its depository bank, an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the books of the City kept for that purpose at the principal corporate trust office of the Registrar by the registered owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. This bond may be transferred without cost to the registered owner except for any tax or governmental charge required to be paid with respect to the transfer. The City, the Registrar, the Paying Agent and any other registrar or paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

This bond is subject to defeasance prior to redemption or payment as provided in the Ordinance referred to herein. **THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE ORDINANCE.** [The Ordinance may be amended without the consent of the owners of the bonds as provided in the Ordinance if the Common Council determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the bonds.]

The bonds maturing in any one year are issuable only in fully registered form in the denomination of \$_____ or any integral multiple thereof.

[The bonds do not qualify for the \$10,000,000 exception from the provisions of Section 265(b)(3) of the Internal Revenue Code of 1986 relating to the disallowance of the deduction for interest expense allocable to tax-exempt obligations.]

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the City of Bloomington, in Monroe County, Indiana, has caused this bond to be executed in its corporate name by the manual or facsimile signature of the

Mayor, countersigned manually or by facsimile by the Controller, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk.

Mayor

[SEAL]

Countersigned:

Controller

ATTEST:

Clerk

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Ordinance.

as Registrar

By: _____
Authorized Representative

[INSERT STATEMENT OF INSURANCE]

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ this bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____, attorney, to transfer the within bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

SECTION VII. Authorization for Preparation and Sale of the BANs and the Bonds; Municipal Bond Insurance; Qualified Surety Bond.

- (1) The Controller is hereby authorized and directed to have the BANs and the Bonds prepared, and the Mayor, Controller and Clerk are hereby authorized and directed

to execute and attest the BANs and the Bonds in the form and manner provided herein. The Controller is hereby authorized and directed to deliver the BANs and the Bonds to the respective purchasers thereof. At the time of delivery of the BANs and the Bonds, the Controller shall collect the full amount which the respective purchasers have agreed to pay therefor, which amount shall not be less than 99.5% of the face value of said BANs and not less than 98.75% of the face value of said Bonds, as the case may be. The City may receive payment for the Bonds and BANs in installments. The Bonds, as and to the extent paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City payable out of the Net Revenues of the sewage works, on a parity with the Outstanding Bonds. The proper officers of the City are hereby directed to sell the Bonds, to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this ordinance. Distribution of an Official Statement (preliminary and final) is hereby authorized and approved and the Mayor, Controller or Clerk are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this ordinance. The Mayor, Controller or Clerk are hereby authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission (the "Rule").

- (2) In the event the financial advisor to the City certifies to the City that it would be economically advantageous for the City to acquire a municipal bond insurance policy for any series of Bonds, the City hereby authorizes and directs the Mayor, Controller and Clerk to obtain such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the total debt service on the Bonds if issued without municipal bond insurance and (b) the total debt service on the Bonds if issued with municipal bond insurance, is greater than the cost of the premium on the municipal bond insurance policy. The cost of obtaining the municipal bond insurance policy shall be considered as a part of the cost of the issuance of the Bonds and shall be paid out of the proceeds of the Bonds or out of other funds of the sewage works system.
- (3) A Qualified Surety Bond may be purchased by the City to satisfy, in whole or in part, the Reserve Account for any series of Bonds issued under this ordinance. The City is authorized to execute and deliver the necessary agreements with the bond insurer providing for, among other things, the reimbursement to the bond insurer of amounts drawn under the Qualified Surety Bond. The Mayor, the Controller, the Clerk or the Assistant Director-Finance of the utility are hereby authorized and directed to complete, execute and attest the agreement pertaining to the Qualified Surety Bond on behalf of the City so long as its provisions are consistent with this ordinance. The cost of obtaining a Qualified Surety Bond shall be considered as a part of the cost of issuance of the Bonds and shall be paid out of the proceeds of the Bonds or out of other funds of the sewage works system.

SECTION VIII. Bond Sale Notice. If any series of Bonds will be sold at a competitive sale, the Controller shall cause to be published either (i) a notice of bond sale in the *Bloomington Herald-Times*, the only newspaper published in the City, two times, at least one week apart, the first publication made at least fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell in the *Bloomington Herald-Times* and the *Court & Commercial Record* all in accordance with IC 5-1-11 and IC 5-3-1. A notice of bond sale may also be published one time in the *Court & Commercial Record*, and a summary notice may also be published in *The Bond Buyer* in New York, New York. The notice shall state the character and amount of the Bonds, the maximum rate of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Controller and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice may provide, among other things, that each bid shall be accompanied by a certified or cashier's check or a financial surety bond in an amount

equal to 1% of the principal amount of the Bonds described in the notice to guarantee performance on the part of the bidder. If a financial surety bond is used, it must be from an insurance company licensed to issue such bond in the State of Indiana, and such bond must be submitted to the City prior to the opening of the bids. The financial surety bond must identify each bidder whose good faith deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit to the City a certified or cashier's check (or wire transfer such amount as instructed by the City) not later than 3:30 p.m. (Bloomington Time) on the next business day following the award. In the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. Bidders for said Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and such interest rate or rates shall be in multiples of one-eighth (1/8) or one-twentieth (1/20) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 98.75% of the face amount of the Bonds will be considered. The opinion of Baker & Daniels LLP, bond counsel of Indianapolis, Indiana, approving the legality of said Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Controller to the best bidder who has submitted his bid in accordance with the terms of this ordinance, IC 5-1-11 and the notice of sale. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities and adding thereto the discount bid, if any, and deducting the premium bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

As an alternative to public sale, the Controller may negotiate the sale of any series of Bonds to the Authority in conjunction with the SRF Program. The Mayor, Controller and Clerk are hereby authorized to (i) submit an application to the Authority, and (ii) sell such Bonds upon such terms as are acceptable to the Mayor, Controller and the Clerk consistent with the terms of this ordinance. The Financial Assistance Agreement for the Bonds and the Project shall be executed by the City and the Authority. The substantially final form of Financial Assistance Agreement attached hereto as Exhibit B and incorporated herein by reference is hereby approved by the Common Council and the Mayor, the Controller, and the Clerk are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement which are consistent with the terms of this ordinance, such changes to be conclusively evidenced by its execution.

SECTION IX. Use of Proceeds and Costs of Issuance. The proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts to be designated as "City of Bloomington, Sewage Works Construction Account" (the "Construction Account"). All funds deposited to the credit of the Sewage Works Sinking Fund or the Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, as amended and supplemental. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Project, refunding the BANs, if issued, or as otherwise required by the Act or for the expenses of issuance of the Bonds. The cost of obtaining the legal services of Ice Miller, shall be considered as a part of the cost of the Project on account of which the BANs and Bonds are issued. Any balance or balances remaining unexpended in such special account or accounts after completion of the Project, which are not required to meet unpaid obligations incurred in connection with such Project, shall either (1) be paid into the Sinking Fund and used solely for the

purposes of said Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

With respect to any series of Bonds sold to the SRF Program to finance Eligible Costs, to the extent that the total principal amount of the Bonds is not paid by the purchaser or drawn down by the City, the City shall reduce the principal amounts of the Bond maturities to effect such reduction in a manner that will still achieve as level annual debt service as practicable as described in Section II.(2).

SECTION X. Accrued Interest. The accrued interest received at the time of delivery of the Bonds, if any, and premium, if any, shall be deposited in the Sewage Works Sinking Fund continued in Section 15.

SECTION XI. Financial Records and Accounts; Continuing Disclosure. The City shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the sewage works and all disbursements made therefrom and all transactions relating to the utility. Copies of all such statements and reports shall be kept on file in the office of the Assistant Director-Finance.

If any series of Bonds or BANs are sold to the SRF Program to finance Eligible Costs, the City shall establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the sewage works in accordance with (i) generally accepted governmental accounting standards for utilities, on an accrual basis, as promulgated by the Government Accounting Standards Board and (ii) the rules, regulations and guidance of the State Board of Accounts.

The Mayor is further authorized to execute an agreement in connection with the offering of the Bonds in accordance with the Rule by which the City agrees to undertake such continuing disclosure obligations as may be required under the Rule. Notwithstanding any other provisions of this ordinance, failure of the City to comply with the provisions of any such agreement shall not be considered an event of default under the Bonds or this ordinance.

SECTION XII. Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this ordinance, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues, on a parity with the Outstanding Bonds, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose.

SECTION XIII. Revenues. All revenues derived from the operation of the sewage works and from the collection of wastewater and storm water rates and charges shall be segregated and deposited as set forth in this ordinance. Of these revenues the proper and reasonable expenses of operation, repair and maintenance of the works shall be paid, the requirements of the Sinking Fund shall be met, and the costs of replacements, extensions, additions and improvements shall be paid.

SECTION XIV. General Account.

- (1) There is hereby continued an account known as the "General Account". All revenues of the sewage works shall be deposited in the General Account. The balance maintained in this Account shall be sufficient to pay the expenses of operation, repair and maintenance for the then next succeeding two calendar months. The moneys credited to this Account shall be used for the payment of the reasonable and proper operation, repair and maintenance expenses of the sewage works on a day-to-day basis, including reasonable legal and professional expenses not taken into account in the definition of Net Revenues, but none of the

monies in such Account shall be used for depreciation, payments in lieu of taxes, replacements, improvements, extensions or additions. Any monies in said Account may be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the sewage works.

- (2) Moneys in the General Account shall be transferred from time to time to meet the requirements of the Sewage Works Sinking Fund. Moneys in excess of those transferred to the Sewage Works Sinking Fund may be transferred to the Sewage Works Improvement Fund or may be retained in the General Account, in the discretion of the Board, and in a manner consistent with the requirements of this ordinance, provided that any excess Net Revenues must be used first to pay (i) MBIA any amounts payable under the 1999 Financial Guaranty Agreement or the 2003 Financial Guaranty Agreement, (ii) Ambac any amounts payable under the 2000 Guaranty Agreement, and (iii) the provider of any Qualified Surety Bond with respect to a series of Bonds under the agreement regarding such Qualified Surety Bond, before such excess Net Revenues may be transferred to the Sewage Works Improvement Fund. Moneys in excess of those (i) required to be in the General Account and the Sewage Works Sinking Fund, and (ii) any amounts payable to (A) MBIA under the 1999 Financial Guaranty Agreement and the 2003 Financial Guaranty Agreement, (B) Ambac under the 2000 Guaranty Agreement, and (C) the provider of any Qualified Surety Bond with respect to a series of Bonds under the agreement regarding such Qualified Surety Bond, may also be used, in the discretion of the Board, for any other lawful purpose related to the sewage works.

SECTION XV. Sewage Works Sinking Fund.

- (1) There is hereby continued a special fund designated the "Sewage Works Sinking Fund" (herein, "Sewage Works Sinking Fund" or "Sinking Fund") for the payment of the principal of and interest on all outstanding revenue bonds which by their terms are payable from the Net Revenues of the sewage works, the payment of any fiscal agency charges in connection with the payment of bonds and for payment of any amounts owed to (i) MBIA under the 1999 Financial Guaranty Agreement and the 2003 Financial Guaranty Agreement, (ii) Ambac under the 2000 Guaranty Agreement, and (iii) the provider of any Qualified Surety Bond with respect to a series of Bonds under the agreement regarding such Qualified Surety Bond. There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of the sewage works to meet the requirements of the Bond and Interest Account and Reserve Account hereby continued in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Account and the Reserve Account equal the principal of and interest on all of the then outstanding bonds of the sewage works to their final maturity and provide for payment of all fiscal agency charges and any amounts owed to (i) MBIA under the 1999 Financial Guaranty Agreement and the 2003 Financial Guaranty Agreement, (ii) Ambac under the 2000 Guaranty Agreement, and (iii) the provider of any Qualified Surety Bond with respect to a series of Bonds under the agreement regarding such Qualified Surety Bond. Any payments owed to MBIA, Ambac or other provider of a Qualified Surety Bond shall be junior and subordinate to the payment of the Bonds and the Outstanding Bonds.
- (2) Bond and Interest Account. There is hereby continued, within the Sinking Fund, the Bond and Interest Account. There shall be credited on the last day of each calendar month to the Bond and Interest Account an amount of the Net Revenues equal to at least one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date and at least one-twelfth (1/12) of the principal on all then outstanding bonds payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the then next succeeding respective interest and principal payment dates shall have been so credited. There shall similarly be credited to the Account

any amount necessary to pay the bank fiscal agency charges for paying interest on outstanding bonds as the same become payable. There shall similarly be credited an amount at least equal to one-twelfth (1/12) of the aggregate amounts owed to (i) MBIA under the 1999 Financial Guaranty Agreement and the 2003 Financial Guaranty Agreement, (ii) Ambac under the 2000 Guaranty Agreement, and (iii) the provider of any Qualified Surety Bond with respect to a series of Bonds under the agreement regarding such Qualified Surety Bond. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest one business day prior to the interest payment date and principal on the due date thereof together with the amount of bank fiscal agency charges. The City shall repay all amounts owed to (i) MBIA under the 1999 Financial Guaranty Agreement and the 2003 Financial Guaranty Agreement, (ii) Ambac under the 2000 Guaranty Agreement, and (iii) the provider of any Qualified Surety Bond with respect to a series of Bonds under the agreement regarding such Qualified Surety Bond, in accordance with the terms thereof. Draws under the 1999 Surety Bond, 2000 Surety Bond, 2003 Surety Bond or any Qualified Surety Bond issued with respect to a series of Bonds shall bear interest at the respective rates specified in the 1999 Financial Guaranty Agreement, the 2000 Guaranty Agreement, the 2003 Financial Guaranty Agreement and the agreement respecting the Qualified Surety Bond issued with respect to such series of Bonds.

- (3) Reserve Account. There is hereby continued, within the Sinking Fund, the Reserve Account. The City purchased the 1999 Surety Bond as a reserve for the 1999 Bonds, the 2000 Surety Bond as a reserve for the 2000A Bonds and 2000B Bonds, and the 2003 Surety Bond as a reserve for the 2003 Bonds and each is held in the Reserve Account. Cash, or investments thereof, are held as a reserve for the 2000C Bonds and the 2004 Bonds. The reserve established for each issue of the Outstanding Bonds and each series of the Bonds shall be deemed to secure only that issue of Outstanding Bonds or Bonds, as the case may be. For the Bonds issued under this ordinance, the City shall purchase a Qualified Surety Bond, use Bond proceeds, funds on hand, or a combination thereof, to fund the Reserve Account. Upon the issuance of any series of Bonds, the Reserve Account shall contain an amount equal to the least of (i) 10% of the proceeds of the Bonds, (ii) maximum annual debt service on the Bonds, (iii) 125% of average annual debt service on the Bonds ("Reserve Requirement"). For purposes of this subsection, proceeds means the face amount of the Bonds minus original issue discount, if any, plus any premium received on the Bonds. The Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on the Bonds and the Outstanding Bonds, and the moneys in the Reserve Account shall be used to pay current principal and interest on the Bonds and the Outstanding Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Reserve Account shall be made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. To the extent that cash and a Qualified Surety Bond are each held in the Reserve Account with respect to a particular series of Outstanding Bonds or Bonds, the cash shall be drawn down completely before any demand is made on such Qualified Surety Bond. In the event moneys in the Reserve Account (whether cash or funds provided under the 1989 Surety Bond, the 1995 Surety Bond, the 1999 Surety Bond, the 2000 Surety Bond or any other Qualified Surety Bond) are transferred to the Bond and Interest Account to pay principal and interest on Outstanding Bonds or Bonds, then such depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after credits into the Bond and Interest Account, provided that in the event that cash and a Qualified Surety Bond are each held in the Reserve Account with respect to a particular series of Outstanding Bonds or Bonds, funds shall be used first to reinstate such Qualified Surety Bond and second, to replenish any cash held in the Reserve Account with respect to such series of Outstanding Bonds or Bonds. Any moneys in the Reserve Account in excess of its requirements may, in the

discretion of the Board, be transferred to the General Account or be used for the purchase of Outstanding Bonds, Bonds or installments of principal of fully registered Bonds, or Outstanding Bonds at a price not exceeding par and accrued interest.

Notwithstanding anything in this Ordinance to the contrary, in the event a series of Bonds are sold to the Authority in connection with the SRF Program to finance Eligible Costs, the Reserve Requirement shall equal the maximum annual debt service on the outstanding bonds payable from the net revenues of the sewage works. The Reserve Requirement for such Bonds may be met by depositing amounts sufficient to equal, in equal monthly installments over a sixty (60) month period, the Reserve Requirement. In any event, with respect to any series of Bonds sold to the Authority, on each January 2 subsequent to the delivery of such series of Bonds, beginning on January 2 of the calendar year immediately following the issuance of such series of Bonds, the City shall decrease, if necessary, the amount on deposit in the Reserve Account so that the remaining amount on deposit equals the Reserve Requirement, provided that the City shall provide to the Authority fifteen (15) days prior written notice of any such intended transfer from the Reserve Account. In the event additional bonds payable from the net revenues of the sewage works are hereafter issued on a parity with the Bonds, the Reserve Requirement shall be proportionately increased to equal maximum annual debt service on the Bonds and all bonds issued on a parity therewith; provided, that, the City may establish a separate reasonably required reserve fund that secures only the proposed parity bonds and shall expressly provide in the authorizing ordinance for such proposed parity bonds that the monies deposited in the Reserve Account hereby as a margin of safety for the payment of principal of and interest on the Bonds do not secure such proposed parity bonds.

SECTION XVI. Sewage Works Improvement Fund. As set forth in Section 14(b), revenues may be transferred or credited from the General Account to a fund designated the "Sewage Works Improvement Fund", which is hereby continued. The Sewage Works Improvement Fund shall be used for improvements, replacements, additions and extensions of the sewage works, and for payments in lieu of taxes. Moneys in the Sewage Works Improvement Fund shall be transferred to the Sewage Works Sinking Fund if necessary to prevent a default in the payment of principal and interest on the Outstanding Bonds or Bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the Reserve Account of the Sewage Works Sinking Fund or may be transferred to the General Account to meet unforeseen contingencies in the operation, repair and maintenance of the sewage works.

SECTION XVII. Maintenance of Funds: Investments. The Sinking Fund shall be deposited in and maintained as a separate account or accounts from all other accounts of the City. The General Account and the Sewage Works Improvement Fund may be maintained in a single account, or accounts, but such account, or accounts, shall likewise be maintained separate and apart from all other accounts of the City and apart from the Sinking Fund account or accounts. All moneys deposited in the accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested in obligations in accordance with the applicable laws, including particularly Indiana Code, Title 5, Article 13, as amended or supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this ordinance.

As long as the 1999 Municipal Bond Insurance Policy or the 2003 Municipal Bond Insurance Policy is in effect, the moneys held in the Funds and Accounts continued under this ordinance, may be invested, to the extent permitted by Indiana law, in the following obligations (the "Permitted Investments"):

- (1) Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and

CATS and TGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

- (2) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):
 1. U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership
 2. Farmers Home Administration (FmHA)
Certificates of beneficial ownership
 3. Federal Financing Bank
 4. Federal Housing Administration Debentures (FHA)
 5. General Services Administration
Participation certificates
 6. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations
 7. U.S. Maritime Administration
Guaranteed Title XI financing
 8. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds
- (3) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):
 1. Federal Home Loan Bank System
Senior debt obligations
 2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates
Senior debt obligations
 3. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations
 4. Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations
 5. Resolution Funding Corp. (REFCORP) obligations
 6. Farm Credit System Consolidated system wide bonds and notes
- (4) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by Standard & Poor's Corporation of AAAM-G; AAAM; or AAM.
- (5) Certificates of deposit secured at all times by collateral described in (a) and/or (b) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.
- (6) Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC or FSLIC.

- (7) Investment Agreements, including GIC's, acceptable to MBIA. Commercial paper rated, at the time of purchase, "Prime - 1" by Moody's Investors Corporation or "A-1" or better by Standard & Poor's Corporation.
- (8) Bonds or notes issued by any state or municipality which are rated by Moody's Investor Corporation or Standard & Poor's Corporation in one of the two highest rating categories assigned by such agencies.
- (9) Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime - 1" or "A3" or better by Moody's Investor Corporation and "A-1" or "A" or better by Standard & Poor's Corporation.
- (10) Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the municipal entity in exchange for the securities at a specified date.

Repurchase Agreements must satisfy the following criteria or be approved by MBIA.

1. Repurchases must be between the municipal entity and a dealer bank or securities firm
 - A. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard & Poor's Corporation and Moody's Investor Services, or
 - B. Banks rated "A" or above by Standard & Poor's Corporation and Moody's Investor Services.
 2. The written repo contract must include the following:
 - A. Securities which are acceptable for transfer are:
 - (1) Direct U.S. governments, or
 - (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA and FHLMC)
 - B. The term of the repo may be up to 30 days
 - C. The collateral must be delivered to the municipal entity, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).
 - D. Valuation of Collateral
 - (1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest
 - (2) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.
 3. Legal opinion which must be delivered to the municipal entity:
 - A. Repo meets guidelines under state law for legal investment of public funds.
- (11) Any pool investment fund administered by the State of Indiana in which the City is statutorily permitted or required to invest.

SECTION XVIII. Defeasance of the Bonds. If, when the Bonds or a portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or a portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or a portion thereof then outstanding shall be paid; or (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii) below), or (ii) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's sewage works. Amounts payable to (i) MBIA under the 1999 Financial Guaranty Agreement or the 2003 Financial Guaranty Agreement (ii) Ambac under the 2000 Guaranty Agreement (iii) the provider of any Qualified Surety Bond with respect to a series of Bonds under the agreement regarding such Qualified Surety Bond, shall not be deemed paid pursuant to this Section 18 and shall continue to be due and owing hereunder until paid by the City in accordance with this ordinance.

SECTION XIX. Rate Covenant. The City covenants and agrees that it will establish and maintain just and equitable rates or charges for the use of and the service rendered by the works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses said sewage works by or through any part of the sewage system of the City, or that in any way uses or is served by such works, at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the City) to provide for the proper Operation and Maintenance (as defined in the Financial Assistance Agreement) of the sewage works, to comply with and satisfy all covenants contained in this ordinance and any Financial Assistance Agreement and to pay all obligations of the sewage works and of the City with respect to the sewage works. The rates and charges shall be established, to the extent permitted by law, to produce Net Revenues sufficient to pay at least 1.20 times the annual debt service on the Outstanding Bonds, the Bonds and all amounts owed to (i) MBIA under the terms of the 1999 Financial Guaranty Agreement and the 2003 Financial Guaranty Agreement, (ii) Ambac under the 2000 Guaranty Agreement, and (iii) the provider of any Qualified Surety Bond with respect to a series of Bonds under the agreement regarding such Qualified Surety Bond. Such rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance of the sewage works and the requirements of the Sinking Fund. The rates or charges so established shall apply to any and all use of such works by and service rendered to the City and all departments thereof, and shall be paid by the City or the various departments thereof as the charges accrue.

SECTION XX. Additional Bond Provisions. The City reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs, provided, however, that if Net Revenues are pledged to the payment of the interest on and principal of such additional BANs, such pledge shall be subordinate to the pledge of Net Revenues to the Bonds and the Outstanding Bonds. The City reserves the right to authorize and issue additional bonds payable out of the revenues of its sewage works ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to its sewage works, or to refund obligations, subject to the following conditions:

- (1) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this ordinance, and the interest on and principal of all bonds payable from the revenues of the sewage works shall have been paid in accordance with their terms. A debt service reserve for the additional parity bonds commensurate with and proportional to the debt service reserve continued for the Bonds under Section XV.(3). shall be established and maintained. Such reserve

may either be funded with bond proceeds, funds of the sewage works or a combination thereof, or the City may obtain a Qualified Surety Bond for said additional parity bonds.

- (2) The Net Revenues of the sewage works in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the Bonds shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued; or, prior to the issuance of the parity bonds the sewage rates and charges shall be increased sufficiently so that the increased rates and charges applied to the previous year's operations would have produced net operating revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of all bonds payable from the revenues of the sewage works, including the additional parity bonds proposed to be issued.

For purposes of this subsection, the records of the sewage works shall be analyzed and all showings prepared by a certified public accountant or nationally recognized financial consultant or consulting engineer employed by the City for that purpose.

- (3) The interest on the additional parity bonds shall be payable semiannually on the first days of January and July and the principal on, or mandatory sinking fund redemptions for, the additional parity bonds shall be payable annually on the first day of January.
- (4) So long as the 1999 Municipal Bond Insurance Policy or 2003 Municipal Bond Insurance Policy is in effect, in connection with the issuance of additional parity bonds, the City shall deliver to MBIA a copy of the disclosure document, if any, circulated with respect to such additional parity bonds.
- (5) If any series of Bonds are sold to the SRF Program to finance Eligible Costs, (i) the City obtains the consent of the Authority, (ii) the City has faithfully performed and is in compliance with each of its obligations, agreements and covenants contained in the Financial Assistance Agreement and this ordinance, and (iii) the City is in compliance with its National Pollutant Discharge Elimination System permits, except for non-compliance for which purpose the bonds are issued, including refunding bonds issued prior to, but part of the overall plan to eliminate such non-compliance.

SECTION XXI. Further Covenants of the City; Maintenance, Insurance, Pledge Not To Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the BANs and the Bonds, it is hereby specifically provided as follows:

- (1) All contracts let by the City in connection with the construction of the Project shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to 100% of the amount of such contracts, to insure the completion of said contracts in accordance with their terms, and such contractors shall also be required to carry such employers' liability and public liability insurance as are required under the laws of the State of Indiana in the case of public contracts, and shall be governed in all respects by the laws of the State of Indiana relating to public contracts.
- (2) The Project shall be constructed under plans and specifications approved by a competent engineer designated by the City. All estimates for work done or material furnished shall first be checked by the engineer and approved by the City.

- (3) So long as any of the Bonds or BANs are outstanding, the City shall at all times maintain the sewage works system in good condition, and operate the same in an efficient manner and at a reasonable cost.
- (4) So long as any of the Bonds or BANs are outstanding, the City shall maintain insurance on the insurable parts of the system, of a kind and in an amount such as is usually carried by private corporations engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the state of Indiana.

As an alternative to maintaining such insurance, the City may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities. The City shall obtain the written consent of the Authority prior to self-insuring the project.

All insurance or self-insurance proceeds shall be used either in replacing or restoring the property destroyed or damaged, or shall be deposited in the Sinking Fund.

- (5) So long as any of the BANs and Bonds are outstanding, the City shall not mortgage, pledge or otherwise encumber the property and plant of its sewage works system, or any part thereof, and shall not sell, lease or otherwise dispose of any part of the same, excepting only such machinery, equipment or other property as may be replaced, or shall no longer be necessary for use in connection with said utility, and, if any Bonds are sold to the Authority in connection with the SRF Program to finance Eligible Costs, the City shall obtain the prior written consent of the Authority.
- (6) If the BANs or Bonds are sold to the Authority in connection with the SRF Program to finance Eligible Costs, the City shall not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the sewage works, other than for normal operating expenditures, without the prior written consent of the Authority if such undertaking would involve, commit or use the revenues of the sewage works.
- (7) Except as otherwise specifically provided in Section 20 of this ordinance, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of the system shall be authorized, issued or executed by the City, except such as shall be made junior and subordinate in all respects to the Bonds, unless all of the Bonds are redeemed or defeased coincidentally with the delivery of such additional bonds or other obligations.
- (8) The City shall take all actions or proceedings necessary and proper, to the extent permitted by law, to require connection of all property where liquid and solid waste, sewage, night soil or industrial waste is produced with available sanitary sewers. The City shall, insofar as possible, and to the extent permitted by law, cause all such sanitary sewers to be connected with said sewage works.
- (9) The provisions of this ordinance shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, all the terms of which shall be enforceable by any BAN or bondholder by any and all appropriate proceedings in law or in equity. After the issuance of the Bonds and BANs, this ordinance shall not be repealed, amended or modified in any respect which will adversely affect the rights or interests of the owners of the Bonds or BANs, nor shall the Common Council or any other body of the City adopt any law, ordinance or resolution in any way adversely affecting the rights of such owners so long as any of the Bonds and BANs, or the interest thereon, remain outstanding or unpaid. Except in the case of changes described in Section 22(1)-(6), this ordinance may be amended, however, without the consent of the owners of the

Bonds or BANs, if the Common Council determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs; provided, however, that if any series of Bonds or BANs are sold to the Authority in connection with the SRF Program to finance Eligible Costs, the City shall obtain the prior written consent of the Authority.

- (10) The provisions of this ordinance shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes herein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this ordinance and said governing Act. The provisions of this ordinance shall also be construed to create a trust in the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of that Fund as in this ordinance set forth. The owners of the Bonds shall have all the rights, remedies and privileges set forth in the provisions of the governing Act, including the right to have a receiver appointed to administer the sewage works in the event the City shall fail or refuse to fix and collect sufficient rates and charges for those purposes, or shall fail or refuse to operate and maintain said system and to apply properly the revenues derived from the operation thereof, or if there be a default in the payment of the interest on or principal of the Bonds.
- (11) If the City shall fail to repay any amounts owing to (i) MBIA under the 1999 Financial Guaranty Agreement or the 1999 Financial Guaranty Agreement, (ii) Ambac under the 2000 Guaranty Agreement, or (iii) the provider of any Qualified Surety Bond with respect to a series of Bonds under the agreement regarding such Qualified Surety Bond, in accordance with the requirements of Section 15(c) hereof, MBIA, Ambac or such other provider of a Qualified Surety Bond, as the case may be, shall be entitled to exercise any and all remedies available at law other than (i) acceleration of the maturity of the Outstanding Bonds or Bonds or (ii) remedies which would adversely affect the holders of the Outstanding Bonds or the Bonds.
- (12) This ordinance shall not be discharged until all amounts owing under the 1999 Financial Guaranty Agreement, the 2000 Guaranty Agreement, the 2003 Financial Guaranty Agreement, or any other agreement respecting a Qualified Surety Bond issued in connection with a series of Bonds shall have been paid in full.

SECTION XXII. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this ordinance and then outstanding shall have the right from time to time, to consent to and approve the adoption by the Common Council of the City of such ordinance or ordinances supplemental hereto or amendatory hereof, as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this ordinance, or in any supplemental ordinance; provided, however, that if any series of Bonds or BANs are sold to the Authority in connection with the SRF Program to finance Eligible Costs, the City shall obtain the prior written consent of the Authority; and provided further, that nothing herein contained shall permit or be construed as permitting:

- (1) An extension of the maturity of the principal of or interest on, or any mandatory sinking fund redemption date for, any Bond issued pursuant to this ordinance; or
- (2) A reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon; or
- (3) The creation of a lien upon or a pledge of the revenues of the sewage works ranking prior to the pledge thereof created by this ordinance; or

- (4) A preference or priority of any Bond or Bonds issued pursuant to this ordinance over any other Bond or Bonds issued pursuant to the provisions of this ordinance; or
- (5) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance; or
- (6) A reduction in the Reserve Requirement.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental ordinance shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Clerk of the City, no owner of any Bond issued pursuant to this ordinance shall have any right to object to the adoption of such supplemental ordinance or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Common Council of the City from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this ordinance of the City and all owners of Bonds then outstanding, shall thereafter be determined, exercised and enforced in accordance with this ordinance, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this ordinance, the rights and obligations of the City and of the owners of the Bonds authorized by this ordinance, and the terms and provisions of the Bonds and this ordinance, or any supplemental or amendatory ordinance, may be modified or altered in any respect with the consent of the City and the consent of the owners of all the Bonds then outstanding.

SECTION XXIII. Investment of Funds.

- (1) The Controller is hereby authorized to invest moneys pursuant to the provisions of this ordinance and IC 5-1-14-3 (subject to applicable requirements of federal law to insure such yield is then current market rate) to the extent necessary or advisable to preserve the exclusion from gross income of interest on the Bonds and bans under federal law.
- (2) The Controller shall keep full and accurate records of investment earnings and income from moneys held in the funds and accounts created or referenced herein. In order to comply with the provisions of the ordinance, the Controller is hereby authorized and directed to employ consultants or attorneys from time to time to advise the City as to requirements of federal law to preserve the tax exclusion. The Controller may pay any fees as operation expenses of the sewage works.

SECTION XXIV. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Bonds and BANs, as the case may be (the "Code") and as an inducement to purchasers of the Bonds and BANs, the City represents, covenants and agrees that:

- (1) The sewage works will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or

output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the BANs or the Bonds, as the case may be. If the City enters into a management contract for the sewage works, the terms of the contract will comply with IRS Revenue Procedure 97-13, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

- (2) No more than 10% of the principal of or interest on the Bonds or BANs is (under the terms of the Bonds, BANs, this ordinance or any underlying arrangement), directly or indirectly, secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.
- (3) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.
- (4) The City reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above during the entire term of the Bonds or BANs, as the case may be.
- (5) No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).
- (6) The City will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion. The City covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.
- (7) It shall be not an event of default under this ordinance if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.
- (8) These covenants are based solely on current law in effect and in existence on the date of delivery of such Bonds and BANs, as the case may be.
- (9) The City represents that it will rebate any arbitrage profits to the United States in accordance with the Code.

SECTION XXV. Issuance of BANs.

- (1) The City, having satisfied all the statutory requirements for the issuance of its Bonds, may elect to issue its BAN or BANs to a financial institution, the Authority, or to any other purchaser, pursuant to a Bond Anticipation Note Purchase Agreement (the "BAN Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. If the BANs are sold to the Authority in connection with the SRF Program to finance Eligible Costs, the Financial Assistance Agreement shall serve as the BAN Purchase Agreement. The Common Council hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing the Bonds to provide interim financing for the Project until permanent financing becomes available. It shall not be necessary for the City to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.
- (2) The Mayor and the Controller are hereby authorized and directed to execute a BAN Purchase Agreement or Financial Assistance Agreement (and any amendments made from time to time) in such form or substance as they shall approve acting upon the advice of counsel. The Mayor, the Clerk and the Controller may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the Bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

SECTION XXVI. Noncompliance with Tax Covenants. Notwithstanding any other provisions of this ordinance, the covenants and authorizations contained in this ordinance (the "Tax Sections") which are designed to preserve the exclusion of interest on the Bonds and BANS from gross income under federal law (the "Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption or with respect to any issue of Bonds the City issues on a taxable basis or with respect to any issue of Bonds the City issues on a taxable basis.

SECTION XXVII. Rate Ordinance. The rates and charges of the sewage works are set forth in Ordinance 05-_____ to be adopted on December ____, 2005. Such ordinance is incorporated herein by reference and two copies of which are on file in the Office of the City Clerk and are available for public inspection.

SECTION XXVIII. Conflicting Ordinances; Termination of Bonding Authority Under Ordinance No. 00-35. All ordinances and parts of ordinances in conflict herewith, except the Prior Ordinances and the ordinances authorizing the Outstanding Bonds, are hereby repealed; provided, however, that this ordinance shall not be construed as adversely affecting the rights of the owners of the Outstanding Bonds. Notwithstanding anything to the contrary contained in Ordinance No. 00-35, adopted by the Common Council of the City on September 13, 2000, as previously amended, no further bonds, notes or other obligations shall be issued thereunder excepting that outstanding BANs issued thereunder may continue to be extended up to a maximum of five (5) years from the date of original issuance thereunder.

SECTION XXIX. Notice of Adoption; Ratification of Declaration of Official Intent to Issue the Bonds. The Board is hereby authorized to publish any notice of adoption of this ordinance as may be required by law. The Common Council of the City further ratifies and delegates to the Board authority to declare the official intent of the City to issue the Bonds contained in Resolution No. _____ of the Board, adopted on November ____, 2005, for purposes of Section 150 of the Internal Revenue Code of 1986, as amended, and the rules promulgated thereunder, and Indiana Code 5-1-14-6(c).

SECTION XXX. Designation of Bonds as "Qualified Tax-Exempt Obligations." Based upon the advice of bond counsel, the Controller of the City is hereby authorized to

designate any series of Bonds or BANs as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code in the event that the reasonably anticipated amount of "tax-exempt obligations" (as defined in Section 265(b) of the Code) (other than obligations described in Section 265(b)(3)(C)(ii) of the Code) which will be issued by or on behalf of the City and all subordinate entities thereof during any particular calendar year of issuance of a series of the Bonds or BANs does not exceed \$10,000,000

SECTION XXXI. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this ordinance.

SECTION XXXII Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, Monroe County, and signing by the Mayor.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, this ____ day of December, 2005.

ANDY RUFF, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this ____ day of December, 2005.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this ____ day of December, 2005.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance authorizes the issuance of Sewage Works Revenue Bonds in an amount not to exceed \$18,930,000 for the purpose of providing funds to pay the cost of certain additions, extensions and improvements to the municipal sewage works of the City including the newly established Storm Water Utility, and the ordinance further provides for the safeguarding of the interests of the owners of said bonds, other matters connected therewith, including the issuance of notes in anticipation of bonds, and repeals ordinances inconsistent herewith.

EXHIBIT A

DESCRIPTION OF THE PROJECT

Administration Building: A new administration building will be built on the site of the one which was destroyed by fire in 2003. The Sewage Works will pay a share of the cost of design and construction from bond proceeds.

Stormwater BAN for College Mall Road and Miller Showers Park Improvements: Two stormwater projects which were completed in 2003 and temporarily funded through a Bond Anticipation Note, will be financed from bond proceeds. These projects included stormwater improvements made in conjunction with the College Mall Road widening project, and a large scale stormwater improvement project as part of the Miller Showers Park renovation project.

Jordan River, Spankers Branch under Walnut: The project includes replacement of approximately 860 linear feet of aging and failing concrete box culvert Installation of new storm inlets on Walnut St.

Jordan River, Walnut to Washington: The project includes replacement of approximately 350 linear feet of aging and failing concrete box culvert, ties into work done on Walnut St. as part of a County project as well as the 2nd and Washington improvements completed several years ago. This establishes the target storm flow capacity for a major storm conveyance system through downtown Bloomington. The existing box culvert is substantially undersized for the downstream end of the Jordan River.

Wet Weather Program: The project involves rehabilitation or replacement of sanitary sewers in the downtown area which experience significant amounts of inflow and infiltration during wet weather events.

Blucher Poole Improvements Phase II: This project is a continuation of improvements ongoing at the Blucher Poole Plant and includes a grit removal facility, influent life stat pump modifications and fine screen, automation and SCADA improvements, a septage receiving station, diffused air system aeration basins, electrical improvements and other miscellaneous improvements.

Dillman Road Plant Headworks Improvements: The project will involve installation of four new pumps replacement of pump switch gear, installation of pump motor control centers, replacement of the screen and upgrade of screening room ventilation and electrical, and other miscellaneous improvements which will increase the raw sewage pumping capacity and improve the screening process.

Dillman Road Plant Disinfection: The project involves conversion from gaseous chlorine

disinfection to sodium hypochlorite. Modifications will be made to Filter Building HVAC, electrical distribution system, supervisory control and data acquisition system, fiberglass reinforced polyethylene tanks with containment provisions, metering pumps, and mechanical appurtenances.

Dillman Road Plant Dechlorination: The project involves installation of chemical storage, metering and application equipment to provide dechlorination of plant effluent. This requires modifications to Filter Building HVAC and electrical distribution system, and the addition of supervisory control and data acquisition system, fiberglass reinforced polyethylene tanks with containment provisions, metering pumps, and mechanical appurtenances.

EXHIBIT B

FORM OF FINANCIAL ASSISTANCE AGREEMENT

**STATE OF INDIANA
WASTEWATER REVOLVING LOAN PROGRAM**

FINANCIAL ASSISTANCE AGREEMENT made as of this ____ day of _____, 200__ by and between the Indiana Finance Authority (the “Finance Authority”), a body politic and corporate, not a state agency but an independent instrumentality of the State of Indiana (the “State”) and the City of Bloomington, Indiana (the “Participant”), a political subdivision as defined in I.C. 13-11-2-164 and existing under I.C. 36-4, witnesseth:

WHEREAS, the State’s Wastewater Revolving Loan Program (the “Wastewater SRF Program”) has been established in accordance with the federal Clean Water Act and the regulations promulgated thereunder, and pursuant to I.C. 13-18-13 (the “Wastewater SRF Act”), which Wastewater SRF Act also establishes the wastewater revolving loan fund (the “Wastewater SRF Fund”); and

WHEREAS, pursuant to the Wastewater SRF Act, the State was authorized to fund the Wastewater SRF Program with federal capitalization grants, together with required state matching funds therefor, and to operate the Wastewater SRF Program, and prior to May 15, 2005 so funded and operated the Wastewater SRF Program; and

WHEREAS, the Indiana Bond Bank (the “Bond Bank”) has had a longstanding commitment to finance water quality and drinking water projects for qualified entities by issuing its bonds, pursuant to I.C. 5-1.5, for the purpose of buying securities of such qualified entities and financed the Wastewater SRF Program, including the required state matching funds, and prior to May 15, 2005 so financed the Wastewater SRF Program; and

WHEREAS, pursuant to Public Law 235 - 2005, by operation of law and effective May 15, 2005, the Finance Authority has become the successor to the State in all matters related to the Wastewater SRF Program (including use and acceptance of federal capitalization grants and required state matching funds and operation of the Wastewater SRF Program) and to the Bond Bank in all matters related to the financing of the Wastewater SRF Program (including the Bond Bank’s outstanding State Revolving Fund Program Bonds and securities of all qualified entities purchased with the proceeds of such bonds); and

WHEREAS, the Participant is a duly existing political subdivision of the State, lawfully empowered to undertake all transactions and execute all documents mentioned or contemplated herein; and

WHEREAS, the Participant has previously entered into a Financial Assistance Agreement with the Finance Authority (or the State in its capacity as predecessor to the Finance Authority in matters related to the Wastewater SRF Program), dated as of March 26, 2002 (the “Prior Agreement”), to borrow money from the Wastewater SRF Program to construct and

acquire a separate project (as described and defined in the Prior Agreement); and

WHEREAS, the Participant has determined to undertake a wastewater treatment system project (as more fully described herein, the “Project”) and to borrow money from the Wastewater SRF Program to construct and acquire the Project; and

WHEREAS, the Finance Authority and the Participant desire to set forth the terms of such financial assistance as hereinafter provided.

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the Finance Authority and the Participant agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms shall, for all purposes of this Agreement, have the following meaning:

“**Agency**” shall mean the United States Environmental Protection Agency or its successor.

“**Authorizing Instrument(s)**” shall mean the separate trust indenture(s) of the Participant entered into with a corporate trustee or the detailed resolution(s) or ordinance(s) of the governing body of the Participant pursuant to which the Bonds are issued in accordance with State law.

“**Authorized Representative**” shall mean the Controller of the Participant or such other officer, official, or representative of the Participant duly authorized to act for and on behalf of the Participant as provided for herein.

“**Bond**” or “**Bonds**” shall mean the instrument(s) which evidence(s) the Loan, as authorized by the Authorizing Instrument and containing the terms set forth in Section 2.02 of this Agreement.

“**Bond Fund**” shall mean the separate and segregated fund or account established and created by the Participant pursuant to the Authorizing Instrument from which payment of the principal of and interest on the Bonds is required to be made by the Participant.

“**Bond Fund Agreement**” shall mean an agreement in such form as from time to time determined by the Finance Authority pursuant to which (a) the Participant’s Bond Fund (including any reserve account established and created by the Participant pursuant to the

Authorizing Instrument related thereto) is held by a financial institution selected by the Finance Authority and available for payment of the Bonds and any other similar obligations of the Participant that are payable from the Bond Fund regardless whether they are on a parity basis and (b) such financial institutional serves as the paying agent for the Bonds and any other such similar obligations of the Participant that are payable from the Bond Fund.

“Business Day” shall mean any day other than a Saturday, Sunday or State legal holiday or any other day on which financial institutions in the State are authorized by law to close and to remain closed.

“Clean Water Act” shall mean the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387, as amended and supplemented from time to time.

“Code” shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, together with the regulations related thereto.

“Department” shall mean the Indiana Department of Environmental Management created under I.C. 13-13-1-1 or its successor.

“Director of Environmental Programs” shall mean the person designated by the Finance Authority as authorized to act as the Director of Environmental Programs (which designation includes such Director’s assumption of the duties previously assigned to the Wastewater SRF Program Representative and the Wastewater SRF Program Director) and where not limited, such person’s designee.

“Disbursement Request” shall mean a request for a disbursement of the Loan made by an Authorized Representative in such form as the Finance Authority may from time to time prescribe.

“Eligible Cost” shall mean and include, whether incurred before or after the date of this Agreement, all costs which have been incurred and qualify for Financial Assistance, including engineering, financing and legal costs related thereto.

“Finance Authority” shall mean the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality of the State.

“Finance Authority Bonds” shall mean (A) any Indiana Bond Bank State Revolving Fund Program Bonds or the Indiana Bond Bank Water Quality Program Bonds issued as a part of the Wastewater SRF Program within the meaning of the Wastewater SRF Indenture and (B) any Finance Authority State Revolving Fund Program Bonds, Finance Authority Water Quality Program Bonds, or other similar obligations of the Finance Authority issued as a part of the Wastewater SRF Program within the meaning of the Wastewater SRF Indenture.

“Financial Assistance” shall mean the financial assistance authorized by the Clean Water Act, including the Loan.

“Loan” shall mean the purchase of the Bonds by the Finance Authority to finance the planning, designing, constructing, renovating, improving and expanding of the Participant’s Treatment Works or refinance an existing debt obligation where such debt was incurred and building of such systems began after March 7, 1985, but does not mean the provision of other Financial Assistance.

“Non-Use Close-out Date” shall mean that date which is the earlier of (a) the first date as of which the full amount of the Loan has been disbursed on a cumulative basis or (b) the date as of which the Participant binds itself that no further Loan disbursements will be made under this Agreement.

“Non-Use Fee” shall mean a fee in an amount determined by the Finance Authority charged to compensate it for costs and expenses within the Wastewater SRF Program. Such amount shall be the greater of (A) the product of the undrawn balance of the Loan on each applicable Non-Use Assessment Date multiplied by one percent (1%) or (B) One Thousand Dollars (\$1,000). Such fee shall apply and be payable under Section 5.09 herein with respect to each Non-Use Assessment Date until the Non-Use Close-out Date shall occur.

“Non-Use Assessment Date” shall mean _____, 20__ and the first day of each sixth (6th) calendar month thereafter unless and until the Non-Use Close-out Date occurs in advance of any such Non-Use Assessment Date.

“Operation and Maintenance” shall mean the activities required to assure the continuing dependable and economic function of the Treatment Works, including maintaining compliance with National Pollutant Discharge Elimination System permits, as follows:

(1) Operation shall mean the control and management of the united processes and equipment which make up the Treatment Works, including financial and personnel management, records, reporting, laboratory control, process control, safety and emergency operation planning and operating activities.

(2) Maintenance shall mean the preservation of the functional integrity and efficiency of equipment and structures by implementing and maintaining systems of preventive and corrective maintenance, including replacements.

“Plans and Specifications” shall mean the detailed written descriptions of the work to be done in undertaking and completing the Project, including the written descriptions of the work to be performed and the drawings, cross-sections, profiles and the like which show the location, dimensions and details of the work to be performed.

“Preliminary Engineering Report” shall mean the information submitted by the Participant that is necessary for the Finance Authority (or if submitted to the Department prior to May 15, 2005, then the Department in its role as predecessor to the Finance Authority in certain matters related to the Wastewater SRF Program to determine the technical, economic and environmental adequacy of the proposed Project.

“Project” shall mean the activities or tasks identified and described in Exhibit A to this Agreement, and incorporated herein, as amended or supplemented by the Participant and consented to by the Finance Authority, for which the Participant may expend the Loan.

“Purchase Account” shall mean the account by that name created by the Wastewater SRF Indenture and held as part of the Wastewater SRF Fund.

“SRF Policy Guidelines” shall mean guidance of general applicability (as from time to time published, amended and supplemented by the Finance Authority) pertaining to participants utilizing financial assistance in connection with their projects funded in whole or in part through the Wastewater SRF Program.

“State” shall mean the State of Indiana.

“Substantial Completion of Construction” shall mean the day on which the Finance Authority (or if designated by the Finance Authority, the Department) determines that all but minor components of the Project have been built, all equipment is operational and the Project is capable of functioning as designed.

“Treatment Works” shall mean all, or any part of, the devices and systems for storage, transport, treatment, recycling and reclamation of municipal sewage, domestic sewage or liquid industrial wastes, or necessary to recycle or reuse water at the most economical cost over the life of the wastewater treatment system, including one or more of the following:

- (1) Intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances.
- (2) Extensions, improvements, remodeling, additions and alterations thereof.
- (3) Elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities.
- (4) Any part of the wastewater treatment system including the land which will be an integral part of the treatment process or is used for ultimate disposal of residue resulting from such treatment, including land used for (i) composting sludge, (ii) temporary storage of such sludge and (iii) the storage of treated wastewater in land treatment systems before land application.

(5) Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal or industrial waste, including waste in combined storm water and sanitary sewer systems.

“Trustee” shall mean J.P. Morgan Trust Company, NA, Indianapolis, Indiana, in its capacity as trustee or its successor under the Wastewater SRF Indenture.

“Wastewater SRF Fund” shall mean the wastewater revolving loan fund as established by I.C. 13-18-13-2.

“Wastewater SRF Indenture” shall mean the Fourth Amended and Restated Wastewater SRF Trust Indenture, dated as of February 1, 2004 between the State and the Trustee, as amended and supplemented from time to time.

(End of Article I)

ARTICLE II

PURPOSE OF BORROWING AND LOAN TERMS

Section 2.01. Amount; Purpose. The Finance Authority agrees to Loan an amount not to exceed _____ Dollars (\$_____) in aggregate principal amount to the Participant as Financial Assistance to pay for the Eligible Costs, as hereinafter described, of the Project on, and subject to, the terms and conditions contained herein. The Loan shall be used only to pay the following Eligible Costs: (a) eligible planning services for the production of a Preliminary Engineering Report (“Planning”), (b) eligible design services for the production of Plans and Specifications (“Design”) and (c) eligible construction costs, including financing and legal costs (“Construction”). The Loan shall be funded solely from available proceeds of the Finance Authority Bonds contained in the Purchase Account or from other sources the Finance Authority, in its sole discretion, may designate. The Loan is evidenced by the Bonds executed and delivered by the Participant contemporaneously herewith. The Bonds shall be in fully registered form, with the Finance Authority registered as the registered owner. So long as the Finance Authority is the registered owner, the principal of and redemption premium, if any, and interest on the Bonds shall be paid to the Trustee by a wire transfer referenced as follows: J.P. Morgan Trust Company, National Association, BNF: Corporate Trust Services, 021 00 021 and Account number 507199561, OBI: SRF, Attn: SRF Contact Trust Officer (317) 756-1302. The Participant agrees to undertake and complete the Project and to receive and expend the Loan proceeds in accordance with this Agreement.

Section 2.02. The Bonds.

(a) The Bonds will bear interest¹ at the per annum rate of _____ percent (___%) (calculated on the basis of a 360-day year comprised of twelve 30-day months) until paid, as provided in I.C. 13-18-13-10 and -15. Interest, if any, on the Bonds will be payable on February 1 and August 1 of each year, commencing _____ 1, 200____. The Bonds will be in the aggregate principal amount of _____ Dollars (\$_____). Subject to Section 2.05 herein, the Bonds will mature on August 1 of each of the years set forth in, and at the principal amount set opposite each such month and year set forth in, the schedule contained in Exhibit B to this Agreement (which is hereby incorporated by reference); provided, however, notwithstanding the foregoing or the terms of the Bonds to the contrary, no maturity of Bonds shall extend beyond the date which is twenty (20) years after Substantial Completion of Construction. If the maturity date for any Bonds is beyond such date, unless otherwise agreed to, such Bonds, together with accrued and unpaid interest thereon, will be due and payable on

¹ Subject to changes hereafter adopted by the Finance Authority, this interest rate will be determined by established criterion as of the date when this Agreement is entered into by the Finance Authority. (Until set when this Agreement is entered, the SRF interest rates change quarterly. Contact the SRF Program to be informed of the rates currently in effect.)

such date.

(b) The Bonds will be subject to redemption by the Participant as provided in the Authorizing Instrument.

(c) The form and other terms of the Bonds will be in conformity with the Authorizing Instrument.

Section 2.03. Disbursement Conditions. Each of the following shall be a condition precedent to the disbursement of the Loan or any portion thereof:

(a) (1) With respect to procurement of professional services related to the Project to be paid from Loan proceeds, the Participant shall have complied with applicable State law and SRF Policy Guidelines. (2) With respect to procurement of all other goods and services related to the Project to be paid from Loan proceeds, the Participant shall have complied with I.C. 36-1-12 and SRF Policy Guidelines.

(b) No representation, warranty or covenant of the Participant contained in this Agreement or in any paper executed and delivered in connection with the transactions contemplated by this Agreement shall be false or inaccurate in any material respect.

(c) The Participant shall undertake and faithfully perform each of its obligations, agreements and covenants contained in this Agreement, the Authorizing Instrument and the Bonds.

(d) There shall be available to the Finance Authority uncommitted funds in an amount sufficient to satisfy the Finance Authority's obligations hereunder from the proceeds of Finance Authority Bonds in the Purchase Account.

(e) The Participant shall have undertaken all actions necessary to comply with and satisfied the conditions and requirements for a Loan secured with money made available from the Wastewater SRF Fund as set forth in federal and State statutes, rules and regulations, including I.C. 13-18-13, SRF Policy Guidelines, the Clean Water Act and 40 C.F.R. Part 35.

(f) Prior to making any Loan disbursement to pay any Construction costs, the Project shall have been approved by the State's Historical Preservation Officer in a manner consistent with the policies and practices of the Wastewater SRF Program (the "Historical Preservation Approval"). Notwithstanding any provision of this Agreement to the contrary, in the event a Historical Preservation Approval has not been given within four (4) months after the date of this Agreement, the Finance Authority may, in its sole discretion, reduce the aggregate amount of the Loan to the amount then disbursed and

outstanding under this Agreement. Upon giving notice to the Participant of such action, no further Loan disbursement may be made under this Agreement unless consented to by the Finance Authority.

Section 2.04. Disbursement Procedures. Loan proceeds shall be disbursed to the Participant by the Trustee for actual Eligible Costs incurred with respect to the Project. The Finance Authority may, in its discretion, cause Loan disbursements to be made (a) directly to the person or entity identified in the Disbursement Request to whom payment is due, or (b) if advised in writing by the Participant that I.C. 36-1-12-14 or a similar law applies to the Project, to the Participant for purposes of collecting retainage, or some combination thereof. Any Loan proceeds in excess of the amount subject to retainage controlled by the Participant will be immediately remitted to the person or entity to whom payment is due, no later than three (3) Business Days after receipt or the date such Loan proceeds are no longer subject to retainage. Loan disbursements shall not be made more frequently than monthly and shall only be made following the submission of a Disbursement Request to the Finance Authority. Disbursement Requests shall be approved by the Director of Environmental Programs prior to submission to the Trustee for a Loan disbursement. Disbursement Requests shall be numbered sequentially, beginning with the number 1.

Section 2.05. Effect of Disbursements. Loan disbursements made to or for the benefit of the Participant shall be deemed to be a purchase of the Bonds in such amounts and with such maturities as achieves as level debt service as practicable, and with no maturity longer than the original maturity schedule; provided that any principal payments originally scheduled under Section 2.02 herein as being due prior to one year after Substantial Completion of Construction shall first be deemed to be a purchase of the Bonds in order of maturity. Interest on the Loan commences on the day that the Finance Authority approves a Disbursement Request and forwards such Disbursement Request to the Trustee for payment. In the event any Loan disbursement is made in excess of Eligible Costs, such excess disbursements shall be immediately paid by the Participant to the Trustee and may, subject to the terms and conditions set forth in this Agreement, be borrowed by the Participant.

Section 2.06. Acknowledgment of Amount of Loan; Final Disbursement. Within 30 days after any request by the Finance Authority from time to time, the Participant shall execute and deliver to the Finance Authority an acknowledgment in the form prescribed by the Finance Authority which acknowledges the outstanding principal of and interest on the Bonds. Unless the Finance Authority consents in writing, no Loan disbursement shall be made more than one year after Substantial Completion of Construction. After Substantial Completion of Construction, upon the request of the Finance Authority, the Participant shall replace, at its expense, the Bonds with substitutes issued pursuant to the Authorizing Instrument to evidence the outstanding principal under the Loan.

(End of Article II)

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTICIPANT

Section 3.01. Planning, Design and Construction Covenants. The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

- (a) Provide information as requested by the Finance Authority to determine the need for, or to complete any necessary, environmental review or analysis.
- (b) Comply with the procurement procedures and affirmative action requirements contained in SRF Policy Guidelines in the Planning, Design and Construction of the Project to the extent that such are to be paid from Loan proceeds.
- (c) With respect to prime and first tier contract awards, report minority and women business enterprise utilization in the Planning, Design and Construction of the Project, to the extent that such are to be paid from Loan proceeds, by executing and delivering Agency Form SF 5700-52 to the Finance Authority whenever any agreements or subagreements are awarded. (These reports must be submitted by the 15th day of each January, April, July and October after which such agreement or subagreement is awarded).
- (d) Comply with all applicable federal, State and local statutes, rules and regulations relating to the acquisition and construction of the Treatment Works.
- (e) In the event Construction is to be paid from Loan proceeds, prior to an award of any contract for Construction of the Project, obtain a construction permit from the Department and receive the written approval of the Finance Authority (or if approved by the Department prior to May 15, 2005, then the Department in its role as predecessor to the Finance Authority in certain matters related to the Drinking Water SRF Program) of the Preliminary Engineering Report.
- (f) Obtain the property rights necessary to construct the Treatment Works and, in procuring any such rights comply with federal and State law.
- (g) In the event Construction is to be paid from Loan proceeds, comply with the federal Davis-Bacon Act, codified at 40 U.S.C. 276a-276a-5 unless separately waived by the Finance Authority.
- (h) In the event Construction is to be paid from Loan proceeds, execute and deliver to the Finance Authority Agency Form 4700-4 (“Pre-award Compliance Review Report for Wastewater Treatment Construction Grants”) and Agency Form 5700-49

(“Certification Regarding the Debarment, Suspension, and Other Responsibility Matters”).

(i) In the event Construction is to be paid from Loan proceeds, follow guidance issued by the Finance Authority in procuring contracts for Construction, including (1) submission to the Finance Authority (or if submitted to the Department prior to May 15, 2005, then the Department in its role as predecessor to the Finance Authority in certain matters related to the Wastewater SRF Program) of Project change orders, (2) obtaining approval from the Director of Environmental Programs of any Project change order which significantly changes the scope or Design of the Project or, when taking into account other change orders and contracts, are reasonably expected to result in expenditures in an amount greater than the Loan, (3) receiving approval from the Director of Environmental Programs prior to the award of any contract for Construction and (4) receiving authorization from the Director of Environmental Programs prior to initiating procurement of Construction of the Project.

(j) In the event Construction is to be paid from Loan proceeds, before awarding Construction contracts, receive approval of the Director of Environmental Programs for the user charge system (including any use ordinance and interlocal agreement) associated with the Project.

(k) In the event Construction is to be paid from Loan proceeds, cause the Project to be constructed in accordance with the Preliminary Engineering Report and Plans and Specifications, using approved contract papers.

(l) Permit the Finance Authority and its agents to inspect from time to time (1) the Project, (2) the Treatment Works and (3) the books and other financial records of the Treatment Works, including the inspections described in SRF Policy Guidelines. Construction contracts shall provide that the Finance Authority or its agents will have access to the Project and the work related thereto and that the Participant’s contractor will provide proper facilities for such access and inspection. All files and records pertaining to the Project shall be retained by the Participant for at least six years after Substantial Completion of Construction.

(m) Upon Substantial Completion of Construction and when requested by the Finance Authority, provide audited reports to the Finance Authority to permit the Finance Authority to determine that the Loan proceeds have been used in compliance with this Agreement.

(n) In the event Construction is to be paid from Loan proceeds, within one year of Substantial Completion of Construction, consistent with in SRF Policy Guidelines, certify to the Finance Authority that the Project meets performance standards, or if not met, (1) submit to the Finance Authority (or if directed by the Finance Authority, to the

Department) a corrective action plan and (2) promptly and diligently undertake any corrective action necessary to bring the Project into compliance with such standards.

(o) In the event Construction is to be paid from Loan proceeds, within one year of Substantial Completion of Construction, provide as-built plans for the Project to the Finance Authority (or if directed by the Finance Authority, to the Department).

Section 3.02. General Covenants. The Participant hereby covenants and agrees with the Finance Authority that the Participant will:

(a) Comply with all applicable federal, State and local statutes, rules and regulations relating to Operation and Maintenance.

(b) (1) Own, operate and maintain the Project and the Treatment Works for their useful life, or cause them to be operated and maintained for their useful life; (2) at all times maintain the Treatment Works in good condition and operate it in an efficient manner and at a reasonable cost; and (3) not sell, transfer, lease or otherwise encumber the Treatment Works or any portion thereof or any interest therein without the prior written consent of the Finance Authority

(c) Obtain and maintain the property rights necessary to operate and maintain the Treatment Works, and in procuring any such rights, comply with federal and State law.

(d) Acquire and maintain insurance coverage acceptable to the Finance Authority, including fidelity bonds, to protect the Treatment Works and its operations. All insurance shall be placed with responsible insurance companies qualified to do business under State law. Insurance proceeds and condemnation awards shall be used to replace or repair the Treatment Works unless the Finance Authority consents to a different use of such proceeds or awards.

(e) Establish and maintain the books and other financial records of the Project (including the establishment of a separate account or subaccount for the Project) and the Treatment Works in accordance with (1) generally accepted governmental accounting principles, as promulgated by the Government Accounting Standards Board and (2) the rules, regulations and guidance of the State Board of Accounts.

(f) Provide to the Finance Authority such periodic financial and environmental reports as it may request from time to time, including (1) annual operating and capital budgets and (2) such other information requested or required of the Finance Authority or the Participant by the Agency.

(g) Provide notice to the Finance Authority under the circumstances contemplated, and undertake inspections as required, by SRF Policy Guidelines.

(h) (1) Establish and maintain just and equitable rates and charges for the use of and the service rendered by the Treatment Works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the Treatment Works, or that in any way uses or is served by the Treatment Works, (2) establish, adjust and maintain rates and charges at a level adequate to produce and maintain sufficient revenue (including user and other charges, fees, income or revenues available to the Participant) to provide for the proper Operation and Maintenance of the Treatment Works, to comply with and satisfy all covenants contained herein and to pay all obligations of the Treatment Works and of the Participant with respect thereto, and (3) if and to the extent Bonds are payable from property taxes, levy each year a special ad valorem tax upon all property located in the boundaries of the Participant, to pay all obligations of the Participant with respect thereto.

(i) If the Bonds are payable from the revenues of the Treatment Works, not borrow any money, enter into any contract or agreement or incur any other liabilities in connection with the Treatment Works without the prior written consent of the Finance Authority if such undertaking would involve, commit or use the revenues of the Treatment Works; provided that the Participant may authorize and issue additional obligations, payable out of the revenues of its Treatment Works, ranking on a parity with the Bonds for the purpose of financing the cost of future additions, extensions and improvements to the Treatment Works, or to refund obligations of the Treatment Works, subject to the conditions, if any, in the Authorizing Instrument.

(j) Comply with the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d *et seq.*, the Age Discrimination Act, as amended, Public Law 94-135, Section 504 of the Rehabilitation Act of 1973, as amended (including Executive Orders 11914 and 11250), 29 U.S.C. Section 794, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, Executive Order 11246 regarding equal employment opportunity, and Executive Orders 11625 and 12138.

(k) Undertake all actions necessary to investigate all potential, material claims which the Participant may have against other persons with respect to the Treatment Works and the Project and take whatever action is necessary or appropriate to (1) recover on any actionable, material claims related to the Project or the Planning, Design or Construction thereof, (2) meet applicable Project performance standards and (3) otherwise operate the Treatment Works in accordance with applicable federal, State and local law.

(l) Not modify, alter, amend, add to or rescind any provision of the Authorizing Instrument without the prior written consent of the Finance Authority.

(m) In the event the Participant adopts an ordinance or resolution to refund the Bonds, within 5 days of the adoption of the ordinance or resolution, provide written notice to the Finance Authority of the refunding.

Section 3.03. Representations and Warranties of the Participant. After due investigation and inquiry, the Participant hereby represents and warrants to the Finance Authority that:

(a) The Participant is duly organized and existing under state law, and constitutes a “political subdivision” within the meaning of I.C. 13-11-2-164 and a “participant” within the meaning of I.C. 13-11-2-151.1. The Project and the Treatment Works are subject to I.C. 36-9-23.

(b) The Participant has full power and authority to adopt the Authorizing Instrument, enter into this Agreement and issue the Bonds and perform its obligations hereunder and thereunder.

(c) By all required action, the Participant has duly adopted the Authorizing Instrument and authorized the execution and delivery of this Agreement, the Bonds and all other papers delivered in connection herewith.

(d) Neither the execution of, nor the consummation of the transaction contemplated by, this Agreement nor the compliance with the terms and conditions of any other paper referred to herein, shall conflict with, result in a breach of or constitute a default under, any indenture, mortgage, lease, agreement or instrument to which the Participant is a party or by which the Participant or its property, including the Treatment Works, is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction.

(e) There is no litigation pending or, to the knowledge of the Participant, upon investigation, threatened that (1) challenges or questions the validity or binding effect of this Agreement, the Authorizing Instrument or the Bonds or the authority or ability of the Participant to execute and deliver this Agreement or the Bonds and perform its obligations hereunder or thereunder or (2) would, if adversely determined, have a significant adverse effect on the ability of the Participant to meet its obligations under this Agreement, the Authorizing Instrument or the Bonds.

(f) The Participant has not at any time failed to pay when due interest or principal on, and it is not now in default under, any warrant or other evidence of obligation or indebtedness of the Participant.

(g) All information furnished by the Participant to the Finance Authority or any of the persons representing the Finance Authority in connection with the Loan or the

Project is accurate and complete in all material respects.

(h) The Participant has taken or will take all proceedings required by law to enable it to issue and sell the Bonds as contemplated by this Agreement.

Each of the foregoing representations and warranties will be deemed to have been made by the Participant as of the date of this Agreement and as of the date of any disbursement of Loan proceeds. Each of the foregoing representations and warranties shall survive the Loan disbursements regardless of any investigation or investigations the Finance Authority may have undertaken.

Section 3.04. Covenants Regarding Assignment. The Participant acknowledges that the Finance Authority may pledge, sell or assign the Bonds or cause the Bonds to be pledged, sold or assigned, and certain of its rights related thereto, as permitted pursuant to Section 5.02 herein. The Participant covenants and agrees to cooperate with and assist in, at its expense, any such assignment. Within 30 days following a request by the Finance Authority, the Participant covenants and agrees with the Finance Authority that the Participant will, at its expense, furnish any information, financial or otherwise, with respect to the Participant, this Agreement, the Authorizing Instrument and the Bonds and the Treatment Works as the Finance Authority reasonably requests in writing to facilitate the sale or assignment of the Bonds.

Section 3.05. Nature of Information. All information furnished by the Participant to the Finance Authority or any person representing the Finance Authority in connection with the Loan or the Project may be furnished to any other person the Finance Authority, in its judgment, deems necessary or desirable in its operation and administration of the Wastewater SRF Program.

Section 3.06. Tax Covenants. The Participant hereby covenants that it will not take, or cause or permit to be taken by it or by any party under its control, or fail to take or cause to permit to be taken by it or by any party under its control, any action that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds pursuant to Section 103 of the Code. The Participant further covenants that it will not do any act or thing that would cause the Bonds to be “private activity bonds” within the meaning of Section 141 of the Code or “arbitrage bonds” within the meaning of Section 148 of the Code. In furtherance and not in limitation of the foregoing, the Participant shall take all action necessary and appropriate to comply with the arbitrage rebate requirements under Section 148 of the Code to the extent applicable to the Participant or the Bonds, including accounting for and making provision for the payment of any and all amounts that may be required to be paid to the United States of America from time to time pursuant to Section 148 of the Code.

Section 3.07. Non-Discrimination Covenant. Pursuant to and with the force and effect set forth in I.C. 22-9-1-10, the Participant hereby covenants that the Participant, and its contractor and subcontractor for the Project, shall not discriminate against any employee or

applicant for employment, to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry.

(End of Article III)

ARTICLE IV
DEFAULTS

Section 4.01. Remedies. The Finance Authority's obligation to make a disbursement under the Loan to the Participant hereunder may be terminated at the option of the Finance Authority, without giving any prior notice to the Participant, in the event: (a) the Participant fails to undertake or perform in a timely manner any of its agreements, covenants, terms or conditions set forth herein or in any paper entered into or delivered in connection herewith (including without limitation the Authorizing Instrument); or (b) any representation or warranty made by the Participant as set forth herein or in any paper entered into or delivered in connection herewith is materially false or misleading. Any such event shall constitute an event of default and in addition to any other remedies at law or in equity, the Finance Authority may (y) require the Participant to enter into a Bond Fund Agreement and the Participant shall enter into such an agreement within 5 days after any such demand and (z) without giving any prior notice, declare the entire outstanding principal amount of the Loan, together with accrued interest thereon, immediately due and payable.

Section 4.02. Effect of Default. Failure on the part of the Finance Authority in any instance or under any circumstance to observe or perform fully any obligation assumed by or imposed upon the Finance Authority by this Agreement or by law shall not make the Finance Authority liable in damages to the Participant or relieve the Participant from paying any Bond or fully performing any other obligation required of it under this Agreement or the Authorizing Instrument; provided, however, that the Participant may have and pursue any and all other remedies provided by law for compelling performance by the Finance Authority of such obligation assumed by or imposed upon the Finance Authority. The obligations of the Finance Authority hereunder do not create a debt or a liability of the Finance Authority or the State under the constitution of the State or a pledge of the faith or credit of the Finance Authority or the State and do not directly, indirectly or contingently, obligate the Finance Authority or the State to levy any form of taxation for the payment thereof or to make any appropriation for their payment. Neither the Finance Authority or the State, nor any agent, attorney, member or employee of the Finance Authority or the State shall in any event be liable for damages, if any, for the nonperformance of any obligation or agreement of any kind whatsoever set forth in this Agreement.

Section 4.03. Defaults under other Financial Assistance Agreements. The Participant and the Finance Authority agree that any event of default occurring under the Prior Agreement shall constitute an event of default under this Agreement. Similarly, the Participant and the Finance Authority agree that any event of default under this Agreement, or under any subsequent financial assistance agreement entered into between the Participant and the Finance Authority, shall constitute an event of default under the Prior Agreement and the subsequent financial assistance agreement, if any, as the case may be.

(End of Article IV)

ARTICLE V

MISCELLANEOUS

Section 5.01. Citations. Any reference to a part, provision, section or other reference description of a federal or State statute, rule or regulation contained herein shall include any amendments, replacements or supplements to such statutes, rules or regulation as may be made effective from time to time.

Section 5.02. Assignment. Neither this Agreement, nor the Loan or the proceeds thereof may be assigned by the Participant without the prior written consent of the Finance Authority and any attempt at such an assignment without such consent shall be void. The Finance Authority may at its option sell or assign all or a portion of its rights and obligations under this Agreement, the Authorizing Instrument, and the Bonds to an agency of the State or to a separate body corporate and politic of the State or to a trustee under trust instrument to which the Finance Authority, the State or any assignee is a beneficiary or party. The Finance Authority may at its option pledge or assign all or a portion of its rights under this Agreement, the Authorizing Instrument, and the Bonds to any person. The Participant hereby consents to any such pledge or assignment by the Finance Authority. This Agreement shall be binding upon and inure to the benefit of any permitted secured party, successor and assign.

Section 5.03. No Waiver. Neither the failure of the Finance Authority nor the delay of the Finance Authority to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other further exercise of any other right, power or privilege.

Section 5.04. Modifications. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto.

Section 5.05. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements, conditions, undertakings, warranties and representations between the parties hereto. This Agreement shall not be deemed to be a merger or integration of the existing terms under the Prior Agreement except as expressly set forth in Section 4.03 herein.

Section 5.06. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be executed by the Finance Authority and the

Participant, and all of which shall be regarded for all purposes as one original and shall constitute one and the same instrument.

Section 5.07. Severability of Invalid Provisions. If any one or more of the covenants or agreements provided in this Agreement on the part of the Finance Authority or the Participant to be performed shall be deemed by a court of competent jurisdiction to be contrary to law or cause the Bonds to be invalid as determined by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements and waived and shall in no way affect the validity of the other provisions of this Agreement.

Section 5.08. Notices. All notices hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered personally or sent or transmitted to the appropriate destination as set forth below in the manner provided for herein. Notice to the Finance Authority shall be addressed to:

Indiana Finance Authority
SRF Programs
100 North Senate, Room 1275
Indianapolis, Indiana 46204
Attention: Director of Environmental Programs

or at such other address(es) or number(s) and to the attention of such other person(s) as the Finance Authority may designate by notice to the Participant. Notices to the Participant shall be addressed to:

City of Bloomington
City Hall
P.O. Box 100
Bloomington, Indiana 47402
Attention: Controller

or at such other address(es) or number(s) and to the attention of such other person(s) as the Participant may designate by notice to the Finance Authority. Any notice hereunder shall be deemed to have been served or given as of (a) the date such notice is personally delivered, (b) three (3) Business Days after it is mailed U.S. mail, First Class postage prepaid, (c) one (1) Business Day after it is sent on such terms by Federal Express or similar next-day courier, or (d) the same day as it is sent by facsimile transmission with telephonic confirmation of receipt by the person to whom it is sent.

Section 5.09. Expenses. The Participant covenants and agrees to pay (a) the fees, costs and expenses in connection with making the Loan, including issuing the Bonds and providing the necessary certificates, documents and opinions required to be delivered therewith; (b) the

fees, costs and expenses in connection with making and administering the Loan; (c) the costs and expenses of complying with its covenants made herein; and (d) any and all costs and expenses, including attorneys' fees, incurred by the Finance Authority in connection with the enforcement of this Agreement, the Authorizing Instrument and the Bonds in the event of the breach by the Participant of or a default under this Agreement, the Authorizing Instrument or the Bonds. Notwithstanding clause (b) above, the Participant shall not be obligated to pay any of the fees, costs and expenses in connection with administering the Loan except as follows: (1) the Finance Authority may request and the Participant shall promptly pay (no later than the date first above written), a closing fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding \$1,000, which may not be paid from a Loan disbursement; (2) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), an annual administrative fee in connection with the Loan in an amount determined by the Finance Authority, but not exceeding \$1,000, which may not be paid from a Loan disbursement; (3) the Finance Authority may request and the Participant shall promptly pay (no later than thirty (30) days after any request), a Non-Use Fee in connection with the Loan, which may not be paid from a Loan disbursement; (4) for so long as the Finance Authority is the registered owner of the Bonds, at the direction of the Finance Authority, the interest rate on the Bonds may be adjusted to lower the interest rate on the Bonds, and the difference between the amount payable as the original rate on the Bonds and the lower rate shall be deemed an additional administrative fee in connection with the Wastewater SRF Program; and (5) the Participant shall only be obligated to pay fees, costs and expenses of the Finance Authority's counsel and financial advisers in connection with making the Loan up to \$5,000, which may be paid from a Loan disbursement.

Section 5.10. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

Section 5.11. Term. This Agreement shall terminate at such time as the Participant has fully met and discharged all of its obligations hereunder, which term may extend beyond the final payment of the Bonds or provision for the payment of the Bonds pursuant to the Authorizing Instrument.

Section 5.12. Non-Collusion. The undersigned attests, subject to the penalties of perjury, that he/she is an authorized officer or representative of the Participant, that he/she has not, nor has any other officer or representative of the Participant, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive pay, and that the undersigned has not received or paid any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the agreement or is a payment to lawyers, accountants and engineers by the Participant related to customary services rendered in connection with the Loan.

(End of Article V)

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BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or officials, all as of the date first above written.

City of Bloomington, Indiana

“Participant”

By: _____

Printed: _____

Title: _____

Attest: _____

INDIANA FINANCE AUTHORITY

“Finance Authority”

By: _____

James P. McGoff

Director of Environmental Programs

Attested and Reviewed by SRF Staff:

By: _____

EXHIBIT A

The Project involves Wastewater Treatment Plant (WWTP) improvements and includes the following elements:

[Project Description]

The Project is more fully described in, and shall be in accordance with, and the Plans and Specifications approved by the Finance Authority (or if designated by the Finance Authority, the Department).

