CITY COUNCIL AGENDA

COUNCIL CHAMBERS TUESDAY, SEPTEMBER 16, 2025 6:00 PM

1. **Call to Order/Roll Call**
2. **Approve Agenda**
3. **Items for Discussion**
   A. Ordinance 2025-13 Granting to Northern States Power Company, A Minnesota Corporation, Its Successors and Assigns, Permission to Construct, Operate, Repair, and Maintain IN the City of Faribault, Minnesota, an Electric Distribution System and Transmission Lines, Including Necessary Poles, Lines, Fixtures, and Appurtenances, for the Furnishing of Electric Energy to the City, Its Inhabitants, and Others, and to Use the Public Grounds and Public Ways of the City for Such Purposes (First Reading)
   B. Ordinance 2025-14 Granting to Northern States Power Company, A Minnesota Corporation, Its Successors and Assigns, Permission to Erect a Gas Distribution System for the Purposes of Constructing, Operating, Repairing and Maintaining in the City of Faribault, Minnesota, the Necessary Gas Pipes, Mains and Appurtenances for the Transmission or Distribution of Gas to the City and Its Inhabitants and Others and Transmitting Gas Into and Through the City and To Use the Public Grounds and Public Ways of the City For Such Purposes (First Reading)
   C. Resolution 2025-231 Approve Real Estate Listing Agreement for the East View Drive Property with MDC Real Estate
   D. Resolution 2025-232 Authorize the Commissioner of Revenue for the State of Minnesota to Collect Lodging Tax on Behalf of the City of Faribault
   E. Ordinance 2025-15 Repeal and Replace Chapter 14, Article V of the Code of Ordinances Regarding the Lodging Tax (First Reading)
4. **Adjournment**

(The Council may meet as a group for dinner)

NOTE:

CC **Closed Captioning of Council meetings available on FCTV.**

Please contact the City Administrator’s Office if you need special accommodations related to a disability while attending the City Council meeting.

Para pedir este documento en otro idioma, envíe un correo electrónico y adjunte el documento a accessibility@faribault.org.

Si aad u codsato dukumeentigan oo ku qoran luqad kale, fadlan e-mail u soo dir oo ku soo lifaaq dukumiintiga accessibility@faribault.org.

Request for Council Action

TO:	Mayor and City Council
THROUGH:	Jessica Kinser, City Administrator
FROM:	
MEETING DATE:	September 16, 2025
SUBJECT:	Ordinance 2025-13 Granting to Northern States Power Company, A Minnesota Corporation, Its Successors and Assigns, Permission to Construct, Operate, Repair, and Maintain IN the City of Faribault, Minnesota, an Electric Distribution System and Transmission Lines, Including Necessary Poles, Lines, Fixtures, and Appurtenances, for the Furnishing of Electric Energy to the City, Its Inhabitants, and Others, and to Use the Public Grounds and Public Ways of the City for Such Purposes (First Reading)

Background:

The franchise agreement allows Xcel Energy to operate an electrical distribution and transmission system within the City of Faribault. The franchise was last adopted in November 2024, for a period of 20 years. While this is expired, there is essentially a one-year period for the City to renew the franchise with Xcel. The existing franchise ordinance is located in Appendix A — Franchises, Article 2, of the Code of Ordinances. This ordinance does not change the amount of the franchise fee but provides for the collection and remittance of a franchise fee on electric services of Xcel customers.

Recommendation:

Approve the first reading on Ordinance 2025-13

Attachments:

1. Ordinance 2025-13 Xcel Electric Franchise

ELECTRIC FRANCHISE ORDINANCE

ORDINANCE NO. 2025-13.

CITY OF FARIBAULT, RICE COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF FARIBAULT, MINNESOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHING OF ELECTRIC ENERGY TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF FARIBAULT, RICE COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

1.1 **City.** The City of Faribault, County of Rice, State of Minnesota.

1.2 **City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate electric retail rates now vested in the Minnesota Public Utilities Commission.

1.4 **Company.** Northern States Power Company, a Minnesota corporation, its successors and assigns.

1.5 **Electric Facilities.** Electric transmission and distribution towers, poles, lines, guys, anchors, conduits, fixtures, and necessary appurtenances owned or operated by Company for the purpose of providing electric energy for public use.

1.6 **Notice**. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 401 Nicollet Mall, 8th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City of Faribault, 208 NW 1st Avenue, Faribault, MN 55021. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.7 **Public Ground.** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

1.8 **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date this Ordinance passed and approved by the City, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Electric Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to state law.

2.2 Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City, by Council resolution, may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

2.3 Service and Rates. The service to be provided and the rates to be charged by Company for electric service in City are subject to the jurisdiction of the Commission. The area within the City in which Company may provide electric service is subject to the provisions of Minnesota Statutes, Section 216B.40.

2.4 Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

2.5 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

2.6 Continuation of Franchise. If the City and Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or Company serves written Notice to the other party of its intention to allow the franchise to expire, but in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 2.1.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1 Location of Facilities. Electric Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Electric Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Electric Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground Electric Facilities in place, provided at the City's request, Company will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

3.2 Field Locations. Company shall provide field locations for its underground Electric Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Electric Facilities. In such event Company shall notify the City by telephone, email, or equivalent to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with state law. Company shall restore Public Ground to as good a condition as formerly existed, and shall maintain any paved surface in good condition for one year thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4.

3.5 Avoid Damage to Electric Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Electric Facilities while performing any activity.

3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Electric Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Electric Facilities.

3.7 Shared Use of Poles. Company shall make space available on its poles or towers for City fire, water utility, police or other City facilities upon terms and conditions acceptable to Company whenever such use will not interfere with the use of such poles or towers by Company, by another electric utility, by a telephone utility, or by any cable television company or other form of communication company. In addition, the City shall pay for any added cost incurred by Company because of such use by City.

SECTION 4. RELOCATIONS.

4.1 Relocation of Electric Facilities in Public Ways. Company and City shall comply with the provisions of Minnesota Rules 7819.3100 with respect to requests for the Company to relocate Electric Facilities located in Public Ways. Except as provided in Section 4.3, Company shall relocate its Electric Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Electric Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense.

4.2 Relocation of Electric Facilities in Public Ground. City may require Company, at Company's expense, to relocate or remove its Electric Facilities from Public Ground upon a finding by City that the Electric Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

4.3 Projects with Federal Funding. City shall not order Company to remove or relocate its Electric Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Electric Facilities made necessary because of a federally aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

4.4 No Waiver. This franchise a shall not be construed to waive or modify any rights obtained by Company for installations within a right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

SECTION 5. TREE TRIMMING.

Company may trim all trees and shrubs in the Public Grounds and Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of any Electric Facilities installed hereunder, provided that Company shall save the

City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City.

SECTION 6. INDEMNIFICATION.

6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Electric Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work The City shall not be indemnified if the injury or damage results from the performance in a proper manner, of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This Franchise shall not constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

SECTION 7. VACATION OF PUBLIC WAYS.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules 7819.3100 and 7819.3200 with respect to any request for vacation. Further, except where required for a City improvement project, the vacation of any Public Way, after the installation of Electric Facilities, shall not operate to deprive Company of its rights to operate and maintain such Electric Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 9. FRANCHISE FEE.

9.1 Fee Schedule. During the term of the franchise hereby granted, the City shall continue to require Company to pay a franchise fee as established in Ordinance 2005-20, as amended, which was most recently updated in Ordinance 2021-9, and included in the City Code in Appendix A, enacted in accordance with Minnesota Statutes, sections 216B.36 and 301B.01.

9.2 Separate Ordinance. Any modification to the franchise fee shall be imposed by a separate ordinance duly adopted by the City Council which ordinance shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The updated fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. The fee may be (1) a percentage of gross revenues received by the Company for its operations within the City, or (2) a flat fee, or (3) on some other similar basis as agreed to by the parties. The method of imposing the franchise fee, the percentage of revenue rate, or the flat fee may differ for each customer class or combine the methods described in (1) – (3) above in assessing the fee. The City shall use a formula that provides a stable and predictable amount of fees and complies with Commission rules and orders and Company tariffs, and that Company is reasonably able to implement under its then-current billing system.

9.3 Terms Defined. For the purpose of this Section 9, the following definitions apply:

9.3.1 "Customer Class" shall refer to the classes listed on the Fee Schedule and as defined or determined in Company's electric tariffs on file with the Commission.

9.4 Collection of the Fee. The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for electric service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually and no charge shall require a collection from any customer for electric service in excess of the amounts specifically permitted in the then current franchise fee ordinance. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for electric service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers.

9.5 Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and the City monthly or more often collects a fee or tax of substantially similar amount on the receipts from sales of electric energy within the City by any other electric energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax.

9.6 Continuation of Franchise Fee. If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon, but in no event shall the franchise fee continue past the franchise expiration as provided in section 2.6 above.

SECTION 10. PROVISIONS OF ORDINANCE.

10.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties, and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 11. AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This franchise supersedes Ordinance 2004-22

Passed and approved: __________________________, 2025.

____
Mayor

Attest:

____
City Administrator

Date Published:_____________________

Request for Council Action

TO:	Mayor and City Council
THROUGH:	Jessica Kinser, City Administrator
FROM:	
MEETING DATE:	September 16, 2025
SUBJECT:	Ordinance 2025-14 Granting to Northern States Power Company, A Minnesota Corporation, Its Successors and Assigns, Permission to Erect a Gas Distribution System for the Purposes of Constructing, Operating, Repairing and Maintaining in the City of Faribault, Minnesota, the Necessary Gas Pipes, Mains and Appurtenances for the Transmission or Distribution of Gas to the City and Its Inhabitants and Others and Transmitting Gas Into and Through the City and To Use the Public Grounds and Public Ways of the City For Such Purposes (First Reading)

Background:
The City of Faribault has granted a franchise to Xcel Energy for operating a natural gas distribution and transmission system in the City. This franchise was last approved on November 9, 2004, for a period of 20 years. The City has until September 30th to renew this franchise. The ordinance extends this for another 20-year period. This ordinance does not change the franchise fees, but provides for those to be charged on gas services by the City and collected/remitted by Xcel.

Recommendation:
Approve the first reading of Ordinance 2025-14.

Attachments:
1. Ordinance 2025-14 Xcel Gas Franchise Faribault

GAS FRANCHISE ORDINANCE

ORDINANCE NO. 2025-14.

CITY OF FARIBAULT, RICE COUNTY, MINNESOTA

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT A GAS DISTRIBUTION SYSTEM FOR THE PURPOSES OF CONSTRUCTING, OPERATING, REPAIRING AND MAINTAINING IN THE CITY OF FARIBAULT, MINNESOTA, THE NECESSARY GAS PIPES, MAINS AND APPURTENANCES FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY AND ITS INHABITANTS AND OTHERS AND TRANSMITTING GAS INTO AND THROUGH THE CITY AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF FARIBAULT, RICE COUNTY, MINNESOTA, ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

1.1 **City.** The City of Faribault, County of Rice, State of Minnesota.

1.2 **City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or agency thereof, including sewer and water service, but excluding facilities for providing heating, lighting or other forms of energy.

1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all, or part of the authority to regulate Gas retail rates now vested in the Minnesota Public Utilities Commission.

1.4 **Company.** Northern States Power Company, a Minnesota corporation, its successors and assigns.

1.5 **Gas.** "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.

1.6 **Gas Facilities.** Pipes, mains, regulators, and other facilities owned or operated by Company for the purpose of providing gas service for public use.

1.7 **Notice**. A written notice served by one party on the other party referencing one or more provisions of this Ordinance. Notice to Company shall be mailed to the General Counsel, 401 Nicollet Mall, 8th Floor, Minneapolis, MN 55401. Notice to the City shall be mailed to the City Administrator, City of Faribault, 208 NW 1st Avenue, Faribault, MN 55021. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.8 **Public Ground.** Land owned by the City for park, open space or similar purpose, which is held for use in common by the public.

1.9 **Public Way.** Any street, alley, walkway or other public right-of-way within the City.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 Grant of Franchise. City hereby grants Company, for a period of 20 years from the date this Ordinance passed and approved by the City, the right to transmit and furnish gas energy for light, heat, power and other purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Grounds and Public Ways of City, subject to the provisions of this Ordinance. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to state law.

2.2 Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by Company, and its publication as required by law. The City by Council resolution may revoke this franchise agreement if Company does not file a written acceptance with the City within 90 days after publication.

2.3 Service and Rates. The service to be provided and the rates to be charged by Company for Gas service in City are subject to the jurisdiction of the Commission.

2.4 Publication Expense. The expense of publication of this Ordinance will be paid by City and reimbursed to City by Company.

2.5 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

2.6 Continuation of Franchise. If the City and Company are unable to agree on the terms of a new franchise by the time this Franchise expires, this Franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or Company serves written Notice to the other party of its intention to allow the franchise to expire, but in no event shall this franchise continue for more than one year after expiration of the 20-year term set forth in Section 2.1.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1 Location of Facilities. Gas Facilities shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. Gas Facilities shall be located on Public Grounds as determined by the City. Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this franchise agreement. Company may abandon underground gas facilities in place, provided, at City's request, Company will remove abandoned metal pipe interfering with a City improvement project, but only to the extent such metal pipe is uncovered by excavation as part of the City's improvement project.

3.2 Field Locations. Company shall provide field locations for its underground Gas Facilities within City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. Company may, however, open and disturb any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Gas Facilities. In such event Company shall notify the City by telephone to the office designated by the City as soon as practicable. Not later than the second working day thereafter, Company shall obtain any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, Company shall restore the same, including paving and its foundation, in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. Company shall restore Public Ground to as good a condition as formerly existed and shall maintain any paved surface in good condition for one year thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Company. Company shall pay to the City the cost of such work done for or performed by the City. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4.

3.5 Avoid Damage to Gas Facilities. Nothing in this Ordinance relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities while performing any activity.

3.6 Notice of Improvements. The City must give Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and

(v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to Company a sufficient length of time in advance of the actual commencement of the work to permit Company to make any necessary additions, alterations or repairs to its Gas Facilities.

SECTION 4. RELOCATIONS.

4.1 Relocation of Gas Facilities in Public Ways. Company and City shall comply with the provisions of Minnesota Rules 7819.3100 with respect to requests for the Company to relocate Electric Facilities located in Public Ways. Except as provided in Section 4.3, Company shall relocate its Gas Facilities at its own expense. The City shall give Company reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City shall reimburse Company for non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Company may be required to make the subsequent relocation at its expense.

4.2 Relocation of Gas Facilities in Public Ground. City may require Company, at Company's expense, to relocate or remove its Gas Facilities from Public Ground upon a finding by City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

4.3 Projects with Federal Funding. City shall not order Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to Company. The City is obligated to pay Company only for those portions of its relocation costs for which City has received federal funding specifically allocated for relocation costs in the amount requested by the Company, which allocated funding the City shall specifically request. Relocation, removal or rearrangement of any Company Gas Facilities made necessary because of a federally aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to Company are valuable rights.

4.4 No Waiver. This franchise shall not be construed to waive or modify any rights obtained by Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or Company's rights under state or county permit.

SECTION 5. TREE TRIMMING.

Company is also granted the permission and authority to trim all shrubs and trees, including roots, in the Public Ways of City to the extent Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of Gas Facilities, provided that Company shall save City harmless from any liability in the premises.

SECTION 6. INDEMNIFICATION.

6.1 Indemnity of City. Company shall indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the Gas Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, Company's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner, of acts reasonably deemed hazardous by Company, and such performance is nevertheless ordered or directed by City after notice of Company's determination.

6.2 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If Company is required to indemnify and defend, it will thereafter have control of such litigation, but Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City and Company, in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This Franchise shall not constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466

SECTION 7. VACATION OF PUBLIC WAYS.

The City shall give Company at least two weeks prior written notice of a proposed vacation of a Public Way. The City and the Company shall comply with Minnesota Rules 7819.3100 and 7819.3200 with respect to any request for vacation. . Further, except where required for a City improvement project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 9. FRANCHISE FEE.

9.1 Fee Schedule. During the term of the franchise hereby granted, the City shall continue to require Company to pay a franchise fee as established in Ordinance 2005-20, as it may be amended from time to time, including at the time of adoption of this franchise, in Ordinance 2021-9, and included in the City Code in Appendix A, enacted in accordance with Minnesota Statutes, sections 216B.36 and 301B.01.

9.2 Separate Ordinance.

Any modification to the franchise fee shall be imposed by a separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon Company by certified mail. The updated fee shall not become effective until the beginning of a Company billing month at least 90 days after written notice enclosing such adopted ordinance has been served upon Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the City in regard to the interpretation of, or enforcement of, the separate ordinance. The fee may be (1) a percentage of gross revenues received by the Company for its operations within the City, or (2) a flat fee, or (3) on some other similar basis as agreed to by the parties. The method of imposing the franchise fee, the percentage of revenue rate, or the flat fee may differ for each customer class or combine the methods described in (1) – (3) above in assessing the fee. The City shall use a formula that provides a stable and predictable amount of fees and complies with Commission rules and orders and Company tariffs, and that Company is reasonably able to implement under its then-current billing system.

9.3 Collection of the Fee. The franchise fee shall be payable quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made by imposing a surcharge equal to the designated franchise fee for the applicable customer classification in all customer billings for gas service in each class. The payment shall be due the last business day of the month following the period for which the payment is made. The franchise fee may be changed by ordinance from time to time; however, each change shall meet the same notice requirements and not occur more often than annually and no charge shall require a collection from any customer for gas service in excess of the amounts specifically permitted in the then current franchise fee ordinance. The time and manner of collecting the franchise fee is subject to the approval of the Commission. No franchise fee shall be payable by Company if Company is legally unable to first collect an amount equal to the franchise fee from its customers in each applicable class of customers by imposing a surcharge in Company's applicable rates for gas service. Company may pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectibles, refunds and correction of erroneous billings. Company agrees to make its records available for inspection by the City at reasonable times provided that the City and its designated representative agree in writing not to disclose any information which would indicate the amount paid by any identifiable customer or customers or any other information regarding identified customers.

9.4 Terms Defined.

9.4.1 "Customer Class" shall refer to classes listed in the Fee Schedule and as defined or determined in Company's gas rate book on file with the Commission.

9.4.2 Therm shall be a unit of gas providing 100,000 Btu of heat content adjusted for billing purposes under the rate schedules of Company on file with the Commission.

9.5 Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against Company unless it lawfully imposes and the City monthly or more often collects a fee or tax of substantially similar amount on the receipts from sales of gas energy within the City by any other gas energy supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax.

9.6 Continuation of Franchise Fee. If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon, but in no event shall the franchise fee continue past the franchise expiration as provided in section 2.6 above.

SECTION 10. PROVISIONS OF ORDINANCE.

10.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

10.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 11. AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance.

SECTION 12. PREVIOUS FRANCHISES SUPERSEDED.

This franchise supersedes Ordinance 2004-21.

Passed and approved: ________________________, 2025.

____
Mayor

Attest:

____
City Administrator

Date Published:____________________

Request for Council Action

TO:	Mayor and City Council
THROUGH:	Jessica Kinser, City Administrator
FROM:	
MEETING DATE:	September 16, 2025
SUBJECT:	Resolution 2025-231 Approve Real Estate Listing Agreement for the East View Drive Property with MDC Real Estate

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Background:

The City previously had an agreement with MDC Real Estate to represent the City's property on East View Drive south of the new law enforcement center. This listing expired on October 31, 2024, but had provisions for payment to John Jasinski should there be a sale within 180 days of the end of the agreement. A person interested in the property more than a year ago has reached out to both Mr. Jasinksi and Dave Wanberg to explore what properties are available for his business, meaning he is looking at more properties than our own. Mr. Jasinski reached out to me, and I said that we could extend representation to the end of the calendar year, with the City's Economic Development Coordinator to take this over in 2026. The attached agreement provides listing/representation through December 31st as well as provisions for compensation up to 6 months following the end of the agreement.

Recommendation:

Approve Resolution 2025-231.

Attachments:

1. Resolution 2025-231 Approve Real Estate Listing East View Dr MDC Real Estate
2. faribault eastview listing

State of Minnesota
County of Rice

CITY OF FARIBAULT

RESOLUTION #2025-231

APPROVE REAL ESTATE LISTING AGREEMENT FOR THE EAST VIEW DRIVE PROPERTY WITH MDC REAL ESTATE

WHEREAS, the City of Faribault owns a parcel of land along East View Drive, known as parcel 18-19-176-002; and

WHEREAS, the City had a contract with MDC Real Estate to list the parcel, which expired on October 31, 2024; and

WHEREAS, MDC Real Estate has reached out regarding interest in the property.

NOW, THEREFORE BE IT RESOLVED, that the Listing Agreement with MDC Real Estate through December 31, 2025, is hereby approved.

Date Adopted: September 16, 2025

Faribault City Council

____
Thomas J. Spooner, Mayor

ATTEST:

____
Jessica L. Kinser, City Administrator

MDC REAL ESTATE

COMMERCIAL LISTING CONTRACT: EXCLUSIVE

Date September 10th, 2025

DEFINITIONS: IN CONSIDERATION OF the Contract of MDC Real Estate Services, LLC
(Real Estate Company Name)

("Broker") to undertake to ☒ **SELL** ☐ **LEASE** (if only **SELL** is checked, all references to Lessor, tenant, or lease do not apply;
----(Check all that apply.)----
if only **LEASE** is checked, all references to Seller, buyer, or sale do not apply) the property hereinafter described,

City of Faribault 3.88 acres of industrial land (Parcel# 18.19.1.76.002)
(e.g., trust, power of attorney, conservator, etc.)

("Seller and/or Lessor") grants to Broker the exclusive right to sell and/or lease or contract to sell and/or lease the property at XXXX East View Drive,

City of Faribault, County of Rice, State of Minnesota, Zip Code 55021, and legally described as Lot 1, Block 2 of Cannon River View ("Property")

for the period from the date of this Contract through and including December 31st 2025, for the sum of 338,000.00 Three Hundred Thirty-Eight Thousand upon the following terms

or at any other price, terms or exchange to which Seller and/or Lessor may consent.

This Contract terminates upon successful closing and/or Lease of the Property(ies) specified in this Contract or expiration or cancellation of this Contract, whichever occurs first.

This Contract may only be canceled by written mutual agreement of the parties.

Seller and/or Lessor understands that Broker may list other properties during the term of this Contract which may compete with Seller's and/or Lessor's Property for potential buyers and/or tenants.

MLS DATA FEED OPTIONS:

EXPLANATIONS AND DEFINITIONS:

"IDX site" means a web site operated by a broker participating in the MLS on which the broker can advertise the listings of other brokers in MLS, subject to certain MLS rules. The consumer visiting an IDX site is not required to register on the site or to have a brokerage relationship with the broker displaying listings on the site.

"Virtual office web site" ("VOW") means a web site operated by a broker participating in the MLS that delivers brokerage services to consumers over the world wide web. Visitors to a VOW are required to register on the site (with their name and a real e-mail address) and enter a brokerage relationship with the broker operating the VOW. The broker operating the VOW can then show the visiting customer/client nearly all of the information available to the broker in MLS. The seller(s) of a listing has the right to opt out of certain kinds of data display under the MLS's VOW policy. The MLS imposes various other rules and restrictions on VOWs.

For each of the following options, the MLS system automatically defaults to "Yes." Seller's and/or Lessor's instructions pertaining to the Internet display of the MLS input data for the Property are as follows:

Option 1. **Listing display on the Internet.** If Seller and/or Lessor selects "No," this listing will not be included in MLS data feeds to Internet web sites that display property listing data, whether intended for advertising the Property or providing online brokerage services (e.g., VOWs). Brokers participating in MLS can still disclose the listing to customers/clients via other means, including e-mail, fax, mail, hand delivery, and orally.

Shall the Property listing be displayed on the Internet, including sold information? ☒ Yes ☐ No

Seller and/or Lessor understands and acknowledges that if Seller and/or Lessor has selected "No" for Option 1, consumers who conduct searches for listings on the Internet will not see information about the Property in response to their searches.

Property located at XXXX East View Drive Faribault MN 55021.

If "No" was selected at Option 1, skip Options 2-4. If "Yes" was selected for Option 1, continue to Option 2.

Option 2. Listing address (Property and unit numbers and street name) display on the Internet. If Seller and/or Lessor selects "No," the address of the Property will be hidden on web sites receiving data feeds from MLS that result in Internet listing display, whether intended for advertising the Property or providing online brokerage services (e.g., VOWs). Brokers participating in MLS can still disclose the address to customers/clients via other means, including e-mail, fax, mail, hand delivery, and orally.

Shall the listing address (Property and unit numbers and street name) be displayed on the Internet? ☒ Yes ☐ No

Option 3. An automated valuation of the Property listing or a link to an automated valuation of it may be displayed adjacent to the listing. Some VOWs or IDX sites may provide an automated valuation model ("AVM") function/service. An AVM uses statistical calculations to estimate the value of a property based upon data from public records, MLS, and other sources, and incorporating certain assumptions. The accuracy of AVMs has sometimes been criticized because they do not take into consideration all relevant factors in valuing a property. Seller and/or Lessor, by selecting "No," may prohibit display of an automated valuation of his or her listing adjacent to the listing.

Shall an automatic valuation of the Property listing or a link to an automated valuation be displayed adjacent to the listing? ☐ Yes ☒ No

Option 4. Comments or reviews of the Property by persons other than the displaying broker may be displayed with or attached as a link to the listing data of the Property. Some VOWs or IDX sites may provide functionality that permits the customers/clients using the VOW or IDX site to enter comments or reviews with the listing or by hyperlink to such comments or reviews. Note that the broker displaying the listing on his or her VOW or IDX site may add commentary representing his or her professional judgment regarding the listing's value, etc.

Shall comments or reviews of the Property by persons other than the displaying broker be displayed with or attached as a link to the listing data of the Property? ☐ Yes ☒ No

SELLER'S AND/OR LESSOR'S OBLIGATION: It is agreed that Seller and/or Lessor shall promptly furnish Broker with complete information concerning any person who during the period of this Contract makes inquiry to Seller and/or Lessor regarding the sale, exchange, or lease of the Property.

If the Property is sold, Seller hereby agrees to furnish to buyer an Abstract of Title, a Registered Property Abstract or an ALTA Title Insurance Commitment, certified to date, to include proper searches covering bankruptcies and state and federal judgments and liens, and to execute or cause to be executed a deed conveying title to the Property to the buyer and any further documents as may be required to consummate the sale in accordance with the terms above designated or with the terms to which Seller may hereafter consent.

Seller and/or Lessor further agrees to promptly notify Broker of any notices pertaining to the Property which are hereafter received during the term of this Contract.

It is further agreed that Seller and/or Lessor shall permit Broker to erect a "For Sale" and/or "For Lease" sign on the Property and to remove all other "For Sale" and/or "For Lease" signs from the Property during the period of this Contract. Seller and/or Lessor shall permit Broker to place information on the Minnesota Commercial Property Exchange ("MCPE") or other type of multiple listing service forum ("MLS") and the Internet concerning the Property. Upon final acceptance of a purchase and/or lease agreement, Seller and/or Lessor allows Broker to withdraw the Property from the market. Broker may notify the MCPE or MLS and member REALTORS® of the price and terms of the sale and/or lease.

Seller and/or Lessor has the full legal right to sell and/or lease the Property.

Seller and/or Lessor certifies that as of the date of execution of this Contract, Seller and/or Lessor has not received any notice of building, health, or fire code violations, nor vacant building registration notification, nor notice of hazardous waste on the Property, nor notice of condemnation pertaining to the Property, except as herein noted (if none, state "none"):

None.

Property located at XXXX East View Drive Faribault MN 55021 .

Access to the Property: To facilitate the showing and sale and/or lease of the Property, Seller and/or Lessor authorizes Broker to:

- [x] access the Property;
- [x] authorize other brokers and their salespersons, inspectors, appraisers, contractors, and other industry professionals to access the Property at reasonable times and upon reasonable notice; and
- [ ] duplicate keys to facilitate convenient and efficient showings of the Property.

Authorizing access means giving Broker permission to:

1. authorize the above-referenced persons to enter the Property, with or without a licensed salesperson present;
2. disclose any security codes necessary to enter the Property; and
3. lend a key to enter the Property, directly or through a lockbox.

Seller and/or Lessor agrees to commit no act which might tend to obstruct Broker's performance. If the Property is occupied by someone other than Seller and/or Lessor, Seller and/or Lessor shall comply with Minnesota law and applicable lease provisions of an existing lease and provide tenant with any required notice in advance of any Property showing.

Seller and/or Lessor understands that prospective buyers/tenants and others authorized to access the Property may record the Property by photograph, video, or other medium while accessing the Property.

RECORDING ON THE PROPERTY: Seller and/or Lessor understands that MN Statute 626A.02 specifically prohibits the interception of oral communications without the consent of at least one of the two parties to the communication. Seller and/or Lessor should seek appropriate legal advice regarding compliance with this statute if Seller and/or Lessor intends to utilize technology that may intercept oral communications between persons other than Seller and/or Lessor.

SELLER AND/OR LESSOR CONTENT LICENSE: In the event Seller and/or Lessor provides content, including, but not limited to, any photos or videos of the Property ("Seller and/or Lessor Content") to Broker, Seller and/or Lessor grants to Broker a nonexclusive, perpetual, world-wide, transferable, royalty free license to sub-license (including through multiple tiers), reproduce, distribute, display, perform, and create derivative works of the Seller and/or Lessor Content. Seller and/or Lessor represents and warrants that Seller and/or Lessor has authority to provide Seller and/or Lessor Content and Seller and/or Lessor Content does not violate any restrictions regarding use including any third-party intellectual property rights or laws. Seller and/or Lessor agrees to execute any further documents that are necessary to effect this license.

NOTICE: THE COMPENSATION RATE FOR THE SALE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND ITS CLIENT.

BROKER'S COMPENSATION: *(Fill in all blanks.)*

COMPENSATION FOR SALE: *(To be completed only if Property is being offered for sale.)* Seller shall pay Broker a retainer fee of $ ____________ when Seller signs this Contract. Broker shall keep this fee even if Seller does not sell the Property. It is further agreed that Seller shall pay Broker a brokerage fee of: *(Check any that apply.)*

- [x] 6 percent (%) of the price for which the Property is sold or exchanged;
- [ ] $ ______________________________ ;
- [ ] $ ______________________________ per square foot;
- [ ] OTHER: ______________________________

____

______________________________ ;

upon the occurrence of any of the following conditions, identified in lines 153-201.

Property located at XXXX East View Drive Faribault MN 55021.

COMPENSATION FOR LEASE: *(To be completed only if Property is being offered for lease.)* Lessor shall pay Broker a retainer fee of $ ____________ when Lessor signs this Contract. Broker shall keep this fee even if Lessor does not lease the Property. It is further agreed that Lessor shall pay Broker a brokerage fee of: *(Check any that apply.)*

- ☐ ________ percent (%) of the total gross obligation of the lease price;
- ☐ ________ percent (%) of the total net obligation of the lease price;
- ☐ $ ____________________;
- ☐ $ ____________________ per useable square foot;
- ☐ $ ____________________ per rentable square foot;
- ☐ OTHER: ____________________

____

____________________;

upon the occurrence of any of the following conditions, identified in lines 153-201 and paid in the following manner:

________ percent (%) upon lease execution and ________ percent (%) upon lease occupancy.

COMPENSATION CONDITIONS:

1. The sale and/or lease, contract for sale and/or lease, exchange or conveyance of the Property during the period of this Contract by Broker or any other person, including but not limited to, Seller and/or Lessor or any other agent or broker not a party to this Contract, in accordance with the price, terms, or exchange as set forth here or as otherwise consented to by Seller and/or Lessor;
2. A buyer and/or tenant is procured, whether by Broker, Seller and/or Lessor or anyone else, who is ready, willing and able to purchase and/or lease the Property at the price and terms set forth above and Seller and/or Lessor refuses to sell and/or lease;
3. A Seller and/or Lessor agrees to sell and/or lease the Property before the expiration of this Contract, and Seller refuses to close the sale and/or Lessor refuses to commence the lease in accordance with the terms of the executed lease agreement;
4. A Seller and/or Lessor removes the Property from the market before expiration of this Listing Contract;
5. If Seller and/or Lessor grants an option to purchase and/or lease the Property, Seller and/or Lessor shall compensate Broker, as provided here, based on the price paid for the option and for any extensions of the option. This compensation shall be paid upon receipt by Seller and/or Lessor of any such payments. In the event such option is exercised, whether during the term of this Contract, or within 2 months after, Seller and/or Lessor shall also compensate Broker on the gross sale and/or lease price of the Property in accordance with the provisions here.

   Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension of the option is applied to the sale and/or lease price of the Property, then any compensation previously paid by Seller and/or Lessor to Broker on account of such option payments shall be credited against the compensation payable to Broker on account of the exercise of the option;
6. During the term of this Listing Contract or within 180 days *(not to exceed six (6) months, except for the purchase or sale of a business in which case it cannot exceed two (2) years)* after the expiration of this Listing Contract:
   (a) the Property is acquired by a public authority;
   (b) an agreement to acquire the Property is reached with a public authority; or
   (c) a public authority institutes eminent domain/condemnation proceedings to acquire the Property;
7. Seller and/or Lessor contributes or conveys the Property or any interest therein to a partnership, joint venture or other business entity during the term of this Contract in lieu of a sale and/or lease of the Property during the term of this Contract;

Property located at XXXX East View Drive Faribault MN 55021 .

8. Seller and/or Lessor is a partnership or other business entity, and an interest in the partnership or other business entity is transferred, whether by merger, outright purchase and/or lease or otherwise in lieu of sale and/or lease of the Property during the term of this Contract; or

9. If within 180 days *(not to exceed six (6) months, except for the purchase or sale of a business in which case it cannot exceed two (2) years)* after the end of this Contract, Seller and/or Lessor sells and/or leases or agrees to sell and/or lease the Property to anyone who has made an affirmative showing of interest in the Property by responding to an advertisement or by contacting the Broker or salesperson involved or has been physically shown the Property by the Broker or salesperson. It is understood that Broker shall not seek to enforce collection of a compensation under this subparagraph nine (9) unless the name and address of the prospect is on a written list given to Seller and/or Lessor within 72 hours after expiration of this Listing Contract.

IF YOU RELIST WITH ANOTHER BROKER WITHIN THE OVERRIDE PERIOD AND THEN SELL AND/OR LEASE YOUR PROPERTY TO ANYONE WHOSE NAME APPEARS ON THIS LIST, YOU COULD BE LIABLE FOR FULL COMMISSIONS TO BOTH BROKERS. IF THIS NOTICE IS NOT FULLY UNDERSTOOD, SEEK COMPETENT ADVICE.

As security for Broker's compensation, Seller and/or Lessor hereby grants to Broker a security interest in the lease payments from the lease of the Property or proceeds from a sale and any title company or other closer who conducts the closing on the sale and/or lease of the Property is directed to disburse the Broker's compensation provided here to Broker at the time of closing.

COMPENSATION DISCLOSURE: Broker ☒ **SHALL** ☐ **SHALL NOT** offer compensation to cooperating brokers.
(Check one.)

If **SHALL**, the compensation to cooperating brokers shall be as follows:

☒ 2.5 % of the gross sales and/or lease price or $ __________ , whichever is greater, to cooperating brokers representing buyer and/or tenant.

☐ _____ % of the gross sales and/or lease price or $ __________ , whichever is greater, to cooperating brokers assisting buyer and/or tenant.

☐ Other: __________

____

FORFEITURE OF EARNEST MONEY: If a buyer of the Property defaults and as a result forfeits the earnest money, Seller shall receive 50 percent (%) and Broker shall receive 50 percent (%) of the earnest money.

CLOSING SERVICES:

NOTICE: THE REAL ESTATE BROKER, LICENSEE REPRESENTING SELLER OR REAL ESTATE CLOSING AGENT HAS NOT EXPRESSED AND, UNDER APPLICABLE STATE LAW, MAY NOT EXPRESS OPINIONS REGARDING THE LEGAL EFFECT OF THE CLOSING DOCUMENTS OR OF THE CLOSING ITSELF.

After a purchase agreement for the Property is signed, arrangements must be made to close the transaction. Seller understands that Seller may arrange for a qualified closing agent or attorney to conduct the closing, or Seller may ask Broker to arrange for the closing. Seller understands that Seller may be required to pay certain closing costs which may effectively reduce the proceeds from the sale.

Seller's choice for closing services: *(Check one.)*

☐ Seller directs Broker to arrange for a qualified closing agent to conduct the closing.

☒ Seller shall arrange for a qualified closing agent or Seller's attorney to conduct the closing.

________ ________
(Seller's Initials) (Seller's Initials)

Property located at XXXX East View Drive Faribault MN 55021.

ADDITIONAL COSTS: Seller acknowledges that Seller may be required to pay certain closing costs, which may effectively increase the cash outlay at closing.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"): Section 1445 of the Internal Revenue Code provides that a transferee ("Buyer") of a United States real property interest must be notified in writing and must withhold tax from the transferor ("Seller") if the transferor ("Seller") is a foreign person, provided there are no applicable exceptions from FIRPTA withholding.

Seller represents and warrants that Seller ☐ **IS** ☒ **IS NOT** a foreign person (i.e., a non-resident alien individual, *-------(Check one.)------* foreign corporation, foreign partnership, foreign trust, or foreign estate) for purposes of income taxation.

Due to the complexity and potential risks of failing to comply with FIRPTA, Seller should **seek appropriate legal and tax advice regarding FIRPTA compliance, as Broker will be unable to confirm whether Seller is a foreign person or whether the withholding requirements of FIRPTA apply.**

AGENCY REPRESENTATION:

☒ Seller and/or Lessor will agree to a dual agency representation and will consider offers made by buyers and/or tenants represented by Broker.

☐ Seller and/or Lessor will not agree to a dual agency representation and will not consider offers by buyers and/or tenants represented by Broker.

Real Estate Company Name: MDC Real Estate Services, LLC

By: ______________________________
(Licensee)

Seller and/or Lessor: ______________________________ Date: ______________

Seller and/or Lessor: ______________________________ Date: ______________

OTHER POTENTIAL SELLERS AND/OR LESSORS: Seller and/or Lessor understands that Broker may list other properties during the term of this Contract. Seller and/or Lessor consents to Broker representing such other potential sellers and/or lessors before, during, and after the expiration of this Contract.

PREVIOUS AGENCY RELATIONSHIPS: Broker, or licensee representing Seller and/or Lessor, may have had a previous agency relationship with a buyer and/or tenant of Seller's and/or Lessor's Property. Seller and/or Lessor acknowledges that Broker, or licensee representing Seller and/or Lessor, is legally required to keep information regarding the ultimate price and terms the buyer and/or tenant would accept and the motivation for buying and/or leasing confidential, if known.

TERMINATION OF FIDUCIARY DUTIES: Broker's fiduciary duties, except the duty of confidentiality, terminate upon the successful closing and/or lease of the Property(ies) specified in this Contract or expiration or cancellation of this Contract, whichever occurs first.

INDEMNIFICATION: Broker will rely on the accuracy of the information Seller and/or Lessor provides to Broker. Seller and/or Lessor agrees to indemnify and hold harmless Broker from and against any and all claims, liability, damage, or loss arising from any misrepresentation, misstatement, omission of fact, or breach of a promise by Seller and/or Lessor. Seller and/or Lessor agrees to indemnify and hold harmless Broker from any and all claims or liability related to damage or loss to the Property or its contents, or any injury to persons in connection with the marketing of the Property. Indemnification by Seller and/or Lessor shall not apply if the damage, loss, or injury is the result of the gross negligence or willful misconduct of the Broker.

Property located at XXXX East View Drive Faribault MN 55021.

ADDITIONAL NOTICES AND TERMS: As of this date Seller and/or Lessor has not received notices from any municipality, government agency, or unit owners' association about the Property that Seller and/or Lessor has not informed Broker about in writing. Seller and/or Lessor agrees to promptly inform Broker, in writing, of any notices of such type that Seller and/or Lessor receives during the term of this Contract.

This shall serve as Seller's and/or Lessor's written notice granting Broker permission to obtain mortgage information (e.g., mortgage balance, interest rate, payoff and/or assumption figures) regarding any existing financing on the Property. A copy of this document shall be as valid as the original.

MISCELLANEOUS: This Contract is binding upon the heirs, successors, and assigns of the parties.

All of the representations and covenants of this Contract shall survive and be enforceable after termination of this Contract.

This Contract constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties relative to the provisions herein. No amendment, modification, or extension of this Contract shall be valid or binding unless made in writing and signed by both Seller and/or Lessor and Broker.

This Contract shall be governed by the laws of the State of Minnesota.

ENTIRE AGREEMENT: This Contract and all addenda and amendments signed by the parties shall constitute the entire agreement between Seller and/or Lessor and Broker. Any other written or oral communication between Seller and/or Lessor and Broker, including, but not limited to, e-mails, text messages, or other electronic communications are not part of this Contract. This Contract can be modified or canceled only in writing signed by Seller and/or Lessor and Broker or by operation of law. All monetary sums are deemed to be United States currency for purposes of this Contract.

ELECTRONIC SIGNATURES: The parties agree the electronic signature of any party on any document related to this transaction constitute valid, binding signatures.

CONSENT FOR COMMUNICATION: Seller and/or Lessor authorizes Broker and its representatives to contact Seller and/or Lessor by mail, phone, fax, e-mail, text message or other means of communication during the term of this Contract and anytime thereafter.

OTHER: ______________________________

COMMERCIAL LISTING CONTRACT: EXCLUSIVE

Property located at XXXX East View Drive Faribault MN 55021.

BROKER	SELLER AND/OR LESSOR
ACCEPTED BY: MDC Real Estate Services, LLC (Real Estate Company Name)	**ACCEPTED BY:** City of Faribault (Business Entity or Individual Name)
By: ______ (Licensee's Signature)	By: ______ (Seller's and/or Lessor's Signature)
John R. Jasinski (Licensee's Printed Name)	Jessica Kinser (Seller's and/or Lessor's Printed Name)
9/10/2025 (Date)	Its: City Adminisrator (Title)
15760 Acorn Trail (Address)	______ (Date)
Faribault MN 55021 (City/State/Zip)	208 First Avenue NW (Address)
507 333-1152 (Phone)	Faribault MN 55021 (City/State/Zip)
john.jasinski@mdcrealestate.com (E-Mail Address)	507 333-0353 (Phone)
	______ (E-Mail Address)

SELLER AND/OR LESSOR

ACCEPTED BY: ______ (Business Entity or Individual Name)

By: ______ (Seller's and/or Lessor's Signature)

______ (Seller's and/or Lessor's Printed Name)

Its: ______ (Title)

______ (Date)

______ (Address)

______ (City/State/Zip)

______ (Phone)

______ (E-Mail Address)

THIS IS A LEGALLY BINDING CONTRACT BETWEEN SELLER AND/OR LESSOR AND BROKER.
IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

Request for Council Action

TO:	Mayor and City Council
THROUGH:	Jessica Kinser, City Administrator
FROM:	
MEETING DATE:	September 16, 2025
SUBJECT:	Resolution 2025-232 Authorize the Commissioner of Revenue for the State of Minnesota to Collect Lodging Tax on Behalf of the City of Faribault

Background:
The City's current lodging tax ordinance allows for the Minnesota Department of Revenue to collect lodging tax on behalf of the City. While an ordinance change is needed and proposed to make this happen, legal counsel has advised adopting this resolution as well.

Recommendation:
Approve Resolution 2025-232

Attachments:
1. Resolution 2025-232 Lodging Tax Collection

State of Minnesota
County of Rice

CITY OF FARIBAULT

RESOLUTION #2025-232

AUTHORIZE THE COMMISSIONER OF REVENUE FOR THE STATE OF MINNESOTA TO COLLECT LODGING TAX ON BEHALF OF THE CITY OF FARIBAULT

WHEREAS, the Minnesota Department of Revenue offers cities the ability to have lodging tax imposed by the City collected by the State; and

WHEREAS, Section 14-92 of the City of Faribault Code of Ordinances authorizes the City Administrator to confer with the Minnesota Commissioner of Revenue to come to an agreement for administration and collection of the lodging tax with approval by the City Council; and

WHEREAS, the City Council finds the collection of the lodging tax by the State of Minnesota on behalf of the City of Faribault to be an efficiency that will save staff time and provide for a better collections process.

NOW, THEREFORE BE IT RESOLVED, that the City of Faribault hereby authorizes the lodging tax to be collected by the State of Minnesota Commissioner of Revenue.

ALSO, BE IT RESOLVED, that the Mayor and City Administrator are authorized to execute the documents necessary to start the collections by the State of Minnesota as quickly as possible.

Date Adopted: September 16, 2025

Faribault City Council

____
Thomas J. Spooner, Mayor

ATTEST:

____
Jessica L. Kinser, City Administrator

Request for Council Action

TO:	Mayor and City Council
THROUGH:	Jessica Kinser, City Administrator
FROM:	
MEETING DATE:	September 16, 2025
SUBJECT:	Ordinance 2025-15 Repeal and Replace Chapter 14, Article V of the Code of Ordinances Regarding the Lodging Tax (First Reading)

Background:
At a special work session on September 9th, staff outlined the process necessary for the Minnesota Department of Revenue to collect the lodging tax on behalf of the City. The State requires 90 days notice, and we would like to start this January 1, 2026. Therefore, an ordinance has been prepared, and a first reading is being held at this special meeting, with a second reading intended for September 23rd to identify the Commissioner of Revenue as the collector of the lodging tax on behalf of the City.

Currently, the lodging tax is sent to the City by local hotel/room rental establishments. It is tracked by the Finance Department and remitted as received to the Faribault Area Chamber of Commerce per the agreement for tourism services. 2025 has been a difficult year with multiple entities not paying timely, some for months at a time. This results in partial payments and additional work by the City Clerk to attempt to collect and by Finance to track payments and process additional payments to the Chamber. While there is a fee from the Department of Revenue, the information and payment will be provided in a way that eliminates any City staff time to obtain payments and minimizes Finance staff time in determining what has been received from whom and when to remit.

Recommendation:
Approve the first reading

Attachments:
1. Ordinance 2025-15 Repeal and Replace Chapter 14 Article V Lodging Tax
2. Chater 14 Article V Faribault

CITY OF FARIBAULT
ORDINANCE No. 2025-15

Repeal and Replace Chapter 14, Article V of the Code of Ordinances Regarding the Lodging Tax

THE CITY OF FARIBAULT ORDAINS that the City Code of Ordinances shall be amended as follows:

Section 1. Chapter 14, Licenses and Business Regulations, Article V, Lodging Tax sections 14-80 through sections 14-96-1 are hereby repealed.

Section 2. Chapter 14, Licenses and Business Regulations, Article V, Lodging Tax is hereby adopted as follows:

Section. 14-80. Authority and purpose.

(a) *Authority.* The City of "CITY" is authorized to impose a tax of up to three percent (3%) on gross receipts subject to the lodging tax under Minnesota Statutes section 469.190.

(b) *Purpose.* The purpose of this Ordinance is to raise revenue to fund a local tourism bureau for the purpose of marketing and promoting the City of "CITY" as a tourist center.

Section 14-81. Definitions.

The following words, terms, and phrases have the meanings given them in this Ordinance unless the language or context clearly indicates a different meaning is intended. Minnesota Statutes section 270C.171 is incorporated for definitions in this Ordinance. In any potential conflict between the statute and this Ordinance, the statute shall take precedence.

Commissioner. "Commissioner" means the commissioner of revenue of the state of Minnesota or a person to whom the commissioner has delegated functions.

City. "City" means the City of "CITY", Minnesota.

Lodging and related services. "Lodging and related services" means lodging and related services by a hotel, rooming house, resort, campground, vacation rental, motel, or trailer camp, including furnishing the guest of the facility with access to telecommunication services, and the granting of any similar license to use real property in a specific facility, other than the renting or leasing of it for a continuous period of 30 days or more under an enforceable written agreement that may not be terminated without prior notice, and including accommodations intermediary services provided in connection with other services provided under this subdivision.

Accommodations intermediary. "Accommodations intermediary" means any person or entity, other than an accommodations provider, that facilitates the sale of lodging and related services as defined in subdivision 3, and that charges a room charge to a customer. The term "facilitates the sale" includes brokering, coordinating, or in any way arranging for the purchase of or the right to use accommodations by a customer. The term "room charge" means the total sales price paid by the customer for the lodging and related services.

Accommodations provider. "Accommodations provider" means any person or entity that furnishes lodging and related services, as defined in subdivision 3, to the general public for compensation. The term "furnishes" includes the sale of use or possession, or the sale of the right to use or possess.

State sales and use tax laws and rules. "State sales and use tax laws and rules" means those provisions of the state revenue laws applicable to state sales and use tax imposition, administration, collection, and enforcement, including Minnesota Statutes, chapters 270C, 289A, 297A, 469A, and Minnesota Rules, chapter 8130, as amended from time to time.

Section. 14-82. Local lodging tax imposed; amount of tax; coordination with state sales and use tax laws and rules.

A local lodging tax is imposed in the amount of three percent (3%) on the gross receipts from sales of lodging and related services, as defined in section 2, subdivision 3 of this Ordinance, sourced within City limits which are taxable under the state sales and use tax laws and rules. All of the provisions of the state sales and use tax laws and rules apply to the local lodging tax imposed by this Ordinance. The local lodging tax imposed by this Ordinance shall be collected and remitted to the Commissioner by the accommodation's intermediary and the accommodations provider on any sale when the state sales tax must be collected and remitted to the Commissioner under the state sales and use tax laws and rules and in the same manner and is in addition to the state sales and use tax.

Section 14-83. Advertising no tax.

It shall be unlawful for any accommodations intermediary or accommodations provider to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the accommodation's intermediary or accommodations provider, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded.

Section 14-85. Use of proceeds.

(a) All of the revenues, interest, and penalties derived from the lodging tax imposed by this Ordinance collected by the Commissioner and remitted to the City shall be deposited by the City Auditor in the City treasury and shall be credited to the fund established to pay the costs of collecting the lodging tax imposed by this Ordinance and to fund a new or contract with a "CITY" City Event and Visitors Bureau.

(b) In accordance with Minnesota Statutes section 469.190, subdivision 3, After the amount charged by the State for collection of the tax, ninety-five percent (95%) of the gross proceeds, derived from the lodging tax imposed by this Ordinance collected by the Commissioner and remitted to the City shall be deposited by the City Auditor in the City treasury and shall be credited to the fund established to pay the costs of collecting the lodging tax imposed by this Ordinance and to fund a tourist center.

Section 6. Agreement with the Commissioner.

The City may enter into an agreement with the Commissioner regarding each party's respective roles and responsibilities related to the imposition, administration, collection, enforcement, and termination of the lodging tax imposed by this Ordinance. Any such agreement shall not abrogate, alter, or otherwise conflict with the state sales and use tax laws and rules, this Ordinance, or Minnesota Statutes section 469.190.

Section 3. This ordinance amendment shall take effect and be in force after its passage and publication in accordance with Section 3.05 of the City Charter.

First Reading: September 16, 2025

Second Reading: September 23, 2025

Publication Date:

Faribault City Council

____
Thomas J. Spooner, Mayor

ATTEST:

____
Jessica L. Kinser, City Administrator

ARTICLE V. - LODGING TAX

Footnotes:

*--- (**5**) ---*

Editor's note— *Section 1 of Ord. No. 2014-014, adopted Oct. 28, 2014, amended Art. V by enacting provisions designated as §§ 14-80—14-100. Inasmuch as sections 14-97—14-100 already exist, said sections have been redesignated as §§ 14-95.1—14-96 at the discretion of the editor. Former Art. V, §§ 14-80—14-96 pertained to similar subject matter, and derived from Ord. No. 84-01, § 1, adopted March 12, 1984; and Ord. No. 85-16, § 1, adopted Oct. 8, 1985.*

Sec. 14-80. - Definitions.

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

Agency. The term "agency" shall mean any local convention or tourism bureau or bureaus for the purposes of marketing and promoting the city as a tourist or convention center. The term Agency shall collectively mean one or more than one agency.

City. The term "city" means the City of Faribault.

City administrator. The term "city administrator" means the city administrator or the city administrator's designee.

Lodger. The term "lodger" means the person obtaining lodging from an operator.

Lodging. The term "lodging" means the furnishing for a consideration of lodging by a hotel, motel or rooming house, except where such lodging shall be for a continuous period of thirty (30) days or more to the same lodger(s). The furnishing of rooms by religious, educational or nonprofit organizations shall not constitute "lodging" for purposes of this article.

Operator. The term "operator" means a person who provides lodging to others or any officer, agent or employee of such person.

Person. The term "person" means any individual, corporation, partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate, or any other combination of individuals. Whenever the term "person" is used in any provision of this article prescribing and imposing a penalty, the term as applied to a corporation, association, or partnership, shall mean the officers, or partners thereof, as the case may be.

Rent. The term "rent" means the total consideration valued in money charged for lodging, whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.

Tax. The term "tax" or "lodging tax" shall mean a three (3) percent compulsory contribution to the city revenue, levied by the city on the gross receipts from the furnishing for consideration of lodging at a hotel, motel, rooming house, tourist court, or resort, other than the renting or leasing of it for a continuous period of thirty (30) days or more.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-81. - Imposition of tax.

Pursuant to Minnesota Statutes, Section 469.190, there is hereby a tax imposed on the rent charged by an operator for providing lodging to any person. The tax collected by the operator shall be a debt owed by the operator to the city and shall be extinguished only by payment to the city. In no case shall the tax imposed by this section upon an operator exceed the amount of tax which the operator is authorized and required by this article to collect from a lodger.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-82. - Collections.

Each operator shall collect the tax imposed by this article at the time the rent is paid. The tax collections shall be deemed to be held in trust by the operator for the city. The amount of tax shall be separately stated from the rent charged for the lodging and those persons paying the tax shall receive a receipt of payment from the operator.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-83. - Exceptions and exemptions.

(a) *Exceptions.* No tax shall be imposed on rent for lodging paid by any officer or employee of a foreign government who is exempt by reason of express provisions of federal law or international treaty.

(b) *Exemptions.* An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the city to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected and such a claim shall be made in writing and under penalty of perjury on forms provided by the city. All such claims shall be forwarded to the city when the returns and collections are submitted as required by this chapter.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-84. - Advertising no tax.

It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than one cent ($0.01) shall be considered an additional cent.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-85. - Payment and returns.

The tax imposed by this article shall be paid by the operator to the city monthly not later than twenty-five (25) days after the end of the month in which the taxes were collected. At the time of payment the operator shall submit a return upon such forms and containing such information as the city administrator may require. The return shall contain the following minimum information:

(1) The total amount of rent collected for lodging during the period covered by the return;

(2) The amount of tax required to be collected and due for the period;

(3) The signature of the person filing the return or that of his agent duly authorized in writing;

(4) The period covered by the return;

(5) The amount of uncollectable rental charges subject to the lodging tax.

The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this article previously paid as a result of any transaction the consideration for which became uncollectable during such reporting period, but only in proportion to the portion of such consideration which became uncollectible.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-86. - Examination of return; adjustments; notices and demands.

The city administrator may rely upon the Minnesota State Sales and Use Tax return filed by the operator with the state in determining the accuracy of a return filed under this chapter. The city administrator shall, after a return is filed pursuant to this article, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid. If the tax due is found to be greater than that paid, such excess shall be paid to the city within ten (10) days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the city within ten (10) days after determination of such refund.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-87. - Refunds.

Any person may apply to the city administrator for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for a refund shall be considered unless filed within one year after such tax was paid, or within one year from the filing of the return, whichever period is the longer. The city administrator shall examine the claim and make and file written findings thereon denying or allowing the claim, in whole or in part, and shall mail a notice thereof by registered mail to such person at the address stated upon the return. If such claim is allowed in whole or in part, the city administrator shall credit the amount of the allowance against any taxes due under this article from the claimant and the balance of said allowance, if any, shall be paid by the city administrator to the claimant.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-88. - Failure to file a return.

If any operator required by this article to file a return shall fail to do so within the time prescribed, or shall make, willfully or otherwise, an incorrect, false or fraudulent return, the operator shall, upon written notice and demand, file such return or corrected return within five (5) days of receipt of such written notice and shall at the same time pay any tax due on the basis thereof. If such person shall fail to file such return or corrected return, the city administrator shall make a return or corrected return, for such person from such knowledge and information as the city administrator can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by such return) shall be paid upon within five (5) days of the receipt of written notice and demand for such payment. Any such return or assessment made by the city administrator shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

(1) If an operator fails to pay a tax and/or penalty imposed hereunder within thirty (30) days after it is required to be paid, the tax and/or penalty may be specially assessed against the real property on which the lodging establishment is located in the same manner as a special assessment for other unpaid city charges. As an alternative to a special assessment, if any portion of a tax imposed by this article, including interest and penalties thereon, is not paid within thirty (30) days after it is required to be paid, the city may institute such legal action as may be necessary to recover the amount due plus attorney's fees, costs and disbursements incurred in any action.

(2)

Upon a showing of good cause, the city administrator may grant an operator one thirty-day extension of time within which to file a return and make payment of taxes as required by this article; provided, that interest during such period of extension shall be added to the taxes due at the rate of ten (10) percent per annum.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-89. - Penalties.

(a) If any tax imposed by this article is not paid within the time herein specified for the payment, or any extension thereof, there shall be added thereto a specific penalty equal to ten (10) percent of the amount remaining unpaid.

(b) In case of any failure to make and file a return within the time prescribed by this article, unless it is shown that such failure is not due to willful neglect, there shall be added to the tax in addition to the ten (10) percent specific penalty provided in subdivision (a) above, ten (10) percent if the failure is for not more than thirty (30) days, with an additional five (5) percent for each additional thirty (30) days or fraction thereof during which such failure continues, not exceeding twenty-five (25) percent in the aggregate. If the penalty as computed does not exceed ten dollars ($10.00), a minimum penalty of ten dollars ($10.00) shall be assessed. The amount so added to any tax shall be collected at the same time and the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

(c) If any person willfully fails to file any return or make any payment required by this article, or willfully files a false or fraudulent return, or willfully attempts in any manner to evade or defeat any such a tax or payment thereof, there shall also be imposed as a penalty an amount equal to fifty (50) percent of any tax (less any amounts paid on the basis of such false or fraudulent return) found due for the period to which such return is related. The penalty imposed by this subdivision shall be collected as part of the tax, and shall be in addition to any other penalties provided by this chapter.

(d) All payments received shall be credited first to penalties, next to interest, and then to the tax due.

(e) The amount of tax not timely paid, together with any penalty provided by this section, shall bear interest at the rate specified in Minnesota Statutes, Section 270C.40 per annum from the time such tax should have been paid. Any interest and penalty shall be added to the tax and be collected as part of thereof.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-90. - Administration of tax.

The city administrator shall administer and enforce the assessment and collection of the taxes imposed by this article. The city administrator shall cause to be prepared blank forms for the returns and other documents required by this article, and shall distribute the same throughout the city and furnish them on application, but failure to receive or secure them shall not relieve any person from any obligation required of him under this article.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-91. - Examine records.

The city administrator and those persons acting on behalf of the city administrator authorized in writing by the city administrator may examine the books, papers and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this article. Every such operator is directed and required to give to the said city administrator, or to his or her duly authorized agent or employee, the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

(Ord. No. 2014-014, § 1, 10-28-14; Ord. No. 2023-23, § 1, 12-12-23)

Sec. 14-92. - Contract with state.

Pursuant to Minnesota Statutes, Section 469.190, subdivision 7, the city administrator is authorized to confer with the Minnesota Commissioner of Revenue to the end that an agreement between the city and the commissioner of revenue may be entered into for the purpose of providing for the administration and collection of the taxes imposed by this article. Such an agreement shall not become effective until presented to the council for its approval and when so approved the tax imposed by this article shall be collected and administered pursuant to the terms of said agreement.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-93. - Violations.

Any person who shall willfully fail to make a return required by this article; or who shall fail to pay the tax after written demand for payment, or who shall fail to remit the taxes collected or any penalty or interest imposed by this article after written demand for such payment, or who shall refuse to permit the city administrator or any duly authorized agents or employees to examine the books, records and papers under his or her control, or who shall willfully make any incomplete, false or fraudulent return shall be guilty of a misdemeanor.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-94. - Agency.

The city may enter into a separate agreement with an agency or more than one agency for purposes of marketing and promoting the city as a tourist or convention center using lodging tax proceeds. Any agency shall equally promote and market all sectors of the city; preferential treatment for certain sectors or subsets is prohibited.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-95. - Distribution of proceeds.

The gross proceeds from the lodging tax pursuant to this article shall be used in accordance with Minnesota Statutes, Section 469.190, as the same may be amended from time to time, to fund the agency for the purpose of marketing and promoting the city as a tourist or convention center.

(Ord. No. 2014-014, § 1, 10-28-14)

Sec. 14-95.1. - Contributions.

The city council, by resolution, may designate up to one hundred (100) percent of the proceeds collected from this tax to the agency for the purpose of marketing and promoting the city as a tourist or convention center.

(1) *Annual budget.* The agency shall submit a preliminary annual budget for the next calendar year to the city by October 15 of each year. The agency shall submit the final budget for the next calendar year to the city council by November 30 of each year. The final budget shall identify the uses for the requested funds out of the lodging tax proceeds. The annual budget shall be audited on a biannual basis using an agreed-upon procedure approved by the city administrator. The cost of the audit shall be paid for by the agency.

(2) *Quarterly reports.* The agency receiving lodging tax proceeds shall submit to the city a quarterly report detailing (1) list of bills/expense report, (2) budget to actual statement, and (3) current fund balance.

(3) *Dedicated funds.* All lodging tax proceeds allocated to the agency shall be placed in a dedicated accounting fund by the agency.

(Ord. No. 2014-014, § 1, 10-28-14; Ord. No. 2023-23, § 1, 12-12-23)

Editor's note— Ord. No. 2023-23, § 1, adopted December 12, 2023, amended the Code by repealing former §§ 14-95.1 and 14-95.2, and renumbering former § 14-95.3 as a new § 14-95.1. Former § 14-95.1 pertained to the tourism commission, and derived from Ord. No. 2014-014, adopted October 28, 2014; and Ord. No. 2019-7, adopted June 11, 2019. Former § 14-95.2 pertained to tourism commission obligations, and derived from Ord. No. 2014-014, adopted October 28, 2014.

Sec. 14-96. - Appeals.

(a) Any operator aggrieved by any notice, order or determination made by the city administrator under this article may file a petition for review of such notice, order or determination, detailing the operator's reasons for contesting the notice, order or determination. The petition shall contain the name of the petitioner, the petitioner's address and the location of the lodging subject to the order notice or determination.

(b) The petition for review shall be filed with the city administrator within ten (10) days after the notice, order or determination for which review is sought has been mailed or served upon the person requesting review.

(c) Upon receipt of the petition, the city administrator, or his or her designee, shall set a date for a hearing and give the petitioner at least five (5) days prior written notice of the date, time and place of the hearing.

(d) At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination shall be modified or withdrawn. The petitioner may be represented by counsel of the petitioner's choosing at the petitioner's own expense.

(e) The hearing shall be conducted by the city administrator or his or her designee, provided only that the person conducting the hearing shall not have participated in the drafting of the order, notice or determination for which review is sought.

(f) The person conducting the hearing shall make written findings of fact and conclusions based upon the applicable sections of this article and the evidence presented. The person conducting the hearing may affirm, reverse or modify the notice, order or determination made by the city administrator. The decision shall be mailed by certified mail to the petitioner at the address stated in the petition.

(g)

Any decision rendered by the city administrator pursuant to this subdivision may be appealed to the city council. A petitioner seeking to appeal a decision must file a written notice of appeal with the city administrator within ten (10) days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the city council agenda as soon as is practical. The city council shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the city council that findings and conclusions were incorrect, the council may modify, reverse or affirm the decision of the city administrator or his or her designee upon the same standards as set forth in subsection (f).

(Ord. No. 2014-014, § 1, 10-28-14; Ord. No. 2023-23, § 1, 12-12-23)

Editor's note— Ord. No. 2023-23, § 1, adopted December 12, 2023, amended the Code by renumbering former §§ 14-95.4 as a new § 14-96.

Sec. 14-96.01. - Nonpublic data.

(a) Data, other than basic taxpayer identification data, collected from taxpayers under this article are nonpublic data pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Section 13.495. No city officer or employee shall provide or otherwise make known in any manner any data disclosed in any return required by this article or any information concerning the affairs of the person making the return acquired from such person's records, officers, or employees while performing an examination or audit, except in connection with a proceeding involving taxes due under this article from the person making such return. Nothing contained in this subsection, unless otherwise provided by law, shall be construed to prohibit the city administrator from publishing statistics so classified that do not disclose the identity of particular returns and the contents thereof.

(b) Notwithstanding subsection (a) of this section, the city may enter into an agreement providing for the administration and collection of the tax imposed by this article by the state department of taxation and its officers and agents.

(Ord. No. 2014-014, § 1, 10-28-14; Ord. No. 2023-23, § 1, 12-12-23)

Editor's note— Ord. No. 2023-23, § 1, adopted December 12, 2023, amended the Code by renumbering former §§ 14-96 as a new § 14-96.1. In order to avoid duplication of section numbers, the new numbering for this section has been changed to 14-96.01 at the editor's discretion.